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No. 81-2329

In the Supreme Court of the United States

OCTOBER TERM, 1981

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, ET AL.,
Petitioners,

v.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Oklahoma

PETITION FOR WRIT OF CERTIORARI

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June 7, 1982

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QUESTIONS PRESENTED

1. Whether Oklahoma takes petitioners' property without compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution where:
   a. petitioners are owners of interests in oil and gas;
   b. petitioners' interests had been included in 640-acre oil and gas drilling and spacing units;
   c. such inclusion modified petitioners' common-law and contract rights so that owners of tracts where wells were drilled were compelled for many years to share their production with all owners within 640-acre governmental sections; and
   d. Oklahoma reduces the size of the units so as to deny any legal right to share in future production of those who were forced to share their production from 3/4 of the original units, and to give 100% of such future production to those who have already enjoyed 75% of the original production; cast a cloud on petitioners' title to oil and gas leases; and force petitioners to drill numerous wells and spend huge sums of money to preserve their leases.
2. Whether Oklahoma violates the Just Compensation and Due Process Clauses by choosing among alternative statutory remedies that remedy most destructive of petitioners' rights.
3. Whether Oklahoma violates the Due Process Clause when it vacates long-standing proration orders, pursuant to which valuable property rights have been developed or maintained, without considering the de-

structive effect of its action on petitioners' rights and without giving a reasoned explanation of its actions.

4. Whether the legislative action of the Oklahoma Corporation Commission described above impairs petitioners' contracts in violation of the Contract Clause.

PARTIES

Petitioners:

Amerada Hess Corporation
Atlantic Richfield Company
Champlin Petroleum Company
Gungoll, Carl E.
Henry H. Gungoll Associates
Ladd Petroleum Corporation
Mack Oil Company
Odessa Natural Corporation
Oklahoma Natural Gas Corporation
Okmar Oil Corporation
Union Texas Petroleum, a Division of Allied Chemical Corporation
Ward, L. O.
Woods Petroleum Corporation

Respondents:

Corporation Commission of the State of Oklahoma
Dierkson, Harvey W., *et al.**
Eason Oil Company
Harper Oil Company
Singer-Fleischaker Oil Operating Company, Inc.
Tenneco Oil Company
Union Oil Company of California

*Additional parties to the Corporation Commission proceeding below are listed in the Appendix.

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No. .....

In the Supreme Court of the United States

OCTOBER TERM, 1981

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, ET AL.,
Petitioners,

v.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Petitioners UNION TEXAS PETROLEUM, a division of Allied Chemical Corporation, CHAMPLIN PETROLEUM COMPANY, ATLANTIC RICHFIELD COMPANY, AMERADA HESS CORPORATION, OKLAHOMA NATURAL GAS COMPANY, HENRY H. GUNGOLL ASSOCIATES, L. O. WARD, CARL E. GUNGOLL, WOODS PETROLEUM CORPORATION, ODESSA NATURAL CORPORATION, MACK OIL COMPANY, OKMAR OIL CORPORATION, and LADD PETROLEUM COMPANY, respectfully pray that a writ of certiorari issue to review the judgment and opinons of the Supreme Court of the State of Oklahoma entered in this proceeding on July 21, 1981, and March 8, 1982.

OPINIONS AND ORDERS BELOW

The opinion of the Oklahoma Supreme Court in *Union Texas Petroleum* v. *Corporation Commission of Oklahoma* is not yet published. The majority and dissenting opinions are reproduced beginning at page 1a of the Appendix. The unpublished decision of the Oklahoma Corporation Commission in Order No. 148243, the affirmance of which is the subject of this petition, is reproduced beginning at page 48a of the Appendix.

JURISDICTION

Order No. 148243 of the Oklahoma Corporation Commission ("Commission") was signed on January 3, 1979. The decision of the Oklahoma Supreme Court affirming the Commission was issued on July 21, 1981. All petitioners timely sought rehearing. The Oklahoma Supreme Court denied the petition for rehearing on March 8, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3) (1976).

STATUTES INVOLVED

52 Okla. Stat. (1981), §87.1(d):

"The Commission shall have jurisdiction upon the filing of a proper application therefor, and upon notice given . . ., to decrease the size of the well spacing units or to permit additional wells to be drilled within the established units, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of wastes prohibited by statute, or any of said wastes, or will

protect or assist in protecting the correlative rights of persons interested in said common source of supply . . ."

STATEMENT OF THE CASE

The Legislature of the State of Oklahoma has vested in the Oklahoma Corporation Commission certain authority to regulate the production of oil and gas. Included in that delegation is the authority to establish the size of well spacing units and the number of wells that may be drilled within those units.

Acting under this authorization, in the early 1960s the Commission established a 640-acre spacing pattern for portions of the Mississippian Formation covering 88 sections of land in Garfield and Major Counties, Oklahoma. Petitioners hold oil and gas leases in the area administered by the spacing rule. At issue here is Oklahoma's action deleting the 640-acre spacing pattern and replacing it with a 160-acre pattern.

The nature of the search for and production of oil and gas presents unique problems in the accommodation of private property rights with the public interest in conservation and long term exploitation of resources.

Oklahoma follows the rule of capture; the owner of mineral rights underneath a tract of land ordinarily owns any oil or gas produced through a well drilled on that tract. It makes no difference whether the oil and gas so produced originally underlaid his property or that of his neighbors; whoever reduces the hydrocarbons to possession is the owner. This necessarily encourages each owner to

drill his own well and to produce it as rapidly as possible, thus tending to result in the drilling of more wells than necessary and production at a rate which decreases ultimate total recovery.

To prevent the waste associated with exploration and production under the rule of capture while protecting the rights *inter sese* of mineral interest owners, Oklahoma enacted a comprehensive scheme for the regulation of oil and gas production and exploration, which limits the number of wells that can be drilled and the rate at which they can be produced. As part of that scheme, the Oklahoma Corporation Commission, an administrative agency with some powers of a court of record, is authorized to establish drilling and spacing units covering common sources of supply of oil and gas. Such units may cover up to 80 acres for sources of supply which are predominantly productive of oil and may cover up to 640 acres for those predominantly productive of gas. 52 Okla. Stat. (1981), §87.1.

Once a drilling and spacing unit has been established, a proportionate share of production from any well therein is allocated to all separate mineral interest owners in the unit. Only one well can be drilled in a drilling and spacing unit unless the Corporation Commission finds that additional wells will assist in the prevention of waste, drainage or injury to correlative rights.

Oil and gas leases, including the ones involved herein, typically are made for a set term of years (the primary term) plus as long thereafter as oil and gas are produced from the leased premises in paying quantities.

Since production from a unit well is treated legally as if it had been produced from each separately owned tract within a drilling and spacing unit, such unit well production serves to extend the life of all leases within the unit for as long as it continues. Permanent cessation of production causes the leases to terminate.

Each of the 88 governmental sections involved below was spaced during the 1960s on a 640-acre basis, and almost all had at least one commercial well drilled on them. The production from each unit well has been shared through the years by all persons owning mineral interests within the unit and by their lessees. Without the spacing order, the owner of the minerals under the tract where the well was located, and his lessee, would have had the legal right to all the minerals produced therefrom under the rule of capture. With spacing, they, in effect traded a share of their production for a share of the production that would be obtained from the rest of the section, either by the drilling of additional wells or by the unit well being capable of draining the full 640-acre section.

The Corporation Commission, on application instigated by individuals who had acquired top leases in the area, i.e., leases that would commence only when existing leases terminated, and filed by respondents who had sold such top leases, replaced the existing 640-acre spacing, with its one well per governmental section, with 160-acre spacing, which would permit four wells per section under the authority of 52 Okla. Stat. (1981), §87.1(d) which provides:

> "The Commission shall have jurisdiction . . . to decrease the size of the well spacing units or to permit additional wells to be drilled . . . upon proper proof

> . . . that such modification . . . will prevent or assist in preventing the various types of wastes . . . or assist in protecting the correlative rights of persons interested . . ."

The basis of the Commission's action was its factual finding that the existing unit wells were incapable of draining the entire 640-acre units, which finding was based on respondents' testimony that the existing wells had drained only the 160-acre quarter section on which they were drilled. While petitioner strenuously disputed the correctness of that finding, it was affirmed by the Oklahoma court, and therefore is binding here. (Appendix at 1a.) Thus, Oklahoma found, on the one hand, that owners and lessees on whose property unit wells had been drilled and who had therefore shared the production from their land, had not in the past received a share of production from the remaining land (since their wells drained only 160 acres); and, at the same time, took away their vested right to share by law in the future production from 3/4 of the unit by deleting the spacing units under which the sharing would have been required. The production share thus taken was given to owners of interests in the 480 acres outside the quarter section where the well was drilled, who had already received 75% of the production from the original unit well.

The transparent purpose of the applications was to attempt to cause the leases in those quarter sections where no unit well was located to terminate for cessation of production so that the top leases would come into effect. While, as yet, no leases have been cancelled, some petitioners have commenced litigation in the Oklahoma courts

to determine the effect of the respacing on petitioners' leases.[1] At a minimum, it is clear under Oklahoma law that petitioners will be forced to drill a well in each quarter section affected within a very short time, if the leases are to be preserved. Precisely what this time period will be depends on the particular lease provisions. Some leases may contain cessation of production clauses, and, where the lease is silent, the common law implies a reasonable time for a lessee to resume production after cessation of production.

Moreover, respondents doubtless will contend in the district court actions now pending that the leases terminated instantly when the respacing order was entered. Petitioners see no basis under Oklahoma law for such a contention, but the precise issue apparently has never been decided. While consideration of any potential impact on the continued life of petitioners' leases is premature in the absence of either a state court decision terminating leases or a clear provision of Oklahoma law requiring termination, both the sudden requirement that up to 250 wells be drilled in a short time at a total cost that easily will exceed 100 million dollars, and the necessity for multiple lawsuits to defend title, are real injuries to petitioners' rights directly flowing from the respacing order. Respondents' brief in response to this Petition perhaps will shed additional light on their contentions regarding lease termination.

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[1] Since the filing of the respacing application herein, the Commission has refused to permit petitioners, or anyone else, to drill additional wells in the subject area. Thus, petitioners have been denied the opportunity to protect themselves from the emergency situation they will face if the Order is affirmed.

In the past, upon proof of changed conditions, the Commission has acted to prevent waste and to protect correlative rights by allowing additional wells to be drilled on each unit, thus allowing sharing in all production from the section, rather than by abolishing spacing on a field-wide basis.

Petitioners argued to the Commission that if additional development was required, the appropriate statutory remedy would be to permit additional wells to be drilled within the established 640-acre units as expressly provided in Section 87.1, and that deletion of the existing units would destroy petitioners' private property rights in violation of Fourteenth Amendment protections. The Commission nevertheless chose to vacate its prior 640-acre spacing order and to establish 160-acre spacing units for the Mississippian Formation.

The Commission's stated rationale for its selection of remedy was that relying on increased density would constitute an indirect delegation of its duties and responsibilities:

> "[T]he interest of the Commission in the prevention of waste and in the protection of correlative rights and the duty and responsibility of the Commission to prevent waste and protect correlative rights require that the Commission not act in derogation of its interest, duty and responsibility by such *an indirect delegation of its duty and responsibility to any owner whose subjective interests may be in conflict with the ends of waste prevention or correlative rights protection . . .*"

Appendix at 78a (emphasis added), and:

> "[I]n this instance the Commission concludes that *the establishing of 160-acre units is the proper relief, even though other relief may be available,* based on the substantial evidence herein . . ."

Appendix at 80a (emphasis added).

The Commission thus rejected the statutory remedy that would have allowed additional drilling *and* avoided destruction of petitioners' property. The Commission gave no consideration to the consequences of its order for petitioners' property rights. There was no finding or evidence that petitioners' interests conflicted with the statutory objectives of preventing waste and protecting correlative rights, or that the wells necessary to achieve these statutory objectives would or would not be drilled by any particular party, applicant or protestant, as a result of the chosen remedy.

The Commission's Order No. 148243 was signed by two of the three commissioners. The chairman declined to sign.

Petitioners argued to the Oklahoma Supreme Court that Order No. 148243 took their property without compensation for the benefit of others, deprived them of due process as an arbitrary application of police power, and interfered with petitioners' vested rights (citing Contract Clause cases). In a 5-4 decision, the Oklahoma Supreme Court affirmed.[2] With respect to the Commission's choice of remedies the court stated as follows:

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[2] Petitioners argued their United States constitutional claims in their Petition in Error, in their brief, in their Reply Brief, and in their Petition for Rehearing. The dissenting opinion specifically relied on these constitutional issues. Appendix 41a.

> "Factually, the record contains indicia that for extended periods of time, Commission orders allowing additional wells on the basis of inability to recover known reserves have not been carried out."

Appendix at 24a.

In addition to being largely irrelevant, since neither respacing nor authorizing increased density imposes any obligation to drill, the court's finding that past authorizations to drill additional wells had not been carried out with dispatch is without substantial evidentiary support. Moreover, even if true, it could not have justified the invasion of petitioners' rights worked by this Order.

The majority's opinion did not otherwise address petitioners' claims under the federal constitution.

On Petition for Rehearing filed with the Oklahoma Supreme Court, petitioners once more urged their federal constitutional claims. Neither the Corporation Commission nor the Supreme Court of the State of Oklahoma majority opinion vindicated, or even expressly addressed, petitioners' claimed rights under the federal constitution.

REASONS FOR GRANTING WRIT

This Court should grant the requested writ for two basic reasons. First, petitioners' valuable property rights have been taken or destroyed without compensation and their contract rights impaired by an arbitrary and unlawful exercise of delegated police powers. This should be corrected. Many millions of dollars in oil and gas production and leasehold interests are at stake. Second, this case involves important federal questions relating to Fifth and Fourteenth Amendment and Contract Clause constraints on the authority of state administrative agencies in their exercise of delegated police powers to nullify long-standing orders pursuant to which valuable property rights have developed, destroying those unnecessarily.

For many years, the properties involved in this case were developed under orders establishing spacing units of 640 acres per well. During this period, petitioners' leasehold interests became inextricably intertwined with the legal effect of the Commission's orders attributing production from unit wells to other acreage within the unit. In the language of this Court, "reasonable investment backed expectations" intervened. *Cf. Kaiser Aetna* v. *United States*, 444 U.S. 164, 175 (1979). By administrative fiat, on the application of parties who stood to gain from the termination of petitioners' leases, the Commission cancelled its long-standing order purportedly "to assure that those wells reasonably required to prevent waste and protect correlative rights can or will be drilled." Appendix at 65a.

The subject matter is not unique to this case. It should be addressed by this Court for the protection of petitioners'

property rights and for the guidance of state administrative agencies in discharging their police power responsibilities.

1. The Commission's Order Effects a Taking of Petitioners' Property for the Benefit of Respondents Contrary to Fourteenth Amendment Protections.

The effect of the respacing order is to take the property of those with interests in the quarter sections where wells have been drilled and give it to others. It is undeniable that the vested right under Oklahoma law of those holding interests in the quarter section where the well is, to share in production from the other three quarter sections has been extinguished, and that 100% of the legal right to that production has now been given to those holding mineral interests to which 3/4 of the production from the unit wells already has been attributed.

Justice Barnes, in dissent below, joined by Justices Hodges and Simms,[3] would have held that the respacing took petitioners' property for the benefit of others and violated the Fourteenth Amendment.

> "The 640-acre unit wells have been in existence since the early 1960s and, but for the spacing orders, the owner or owners of the minerals under the land upon which the unit well is located would have received 100% of the royalty from the well. Because of the spacing orders, such owner has shared the royalty proceeds with the other mineral owners in the 640-acre unit. If the order of the Commission stands,

[3] Chief Justice Irwin dissented without opinion.

such owner or owners will find that they now own 100% of the royalty attributable to the *partially* depleted unit well, and have been stripped of any participation in the production of any additional well or wells that may be drilled in the governmental section that formerly comprised the 640-acre unit. That parties who have shared their royalty under the compulsion of the statutory unit should be deprived of any right to share in the production from any additional wells that might be drilled in the unit acreage is a gross inequity and a violation of their vested rights. Thus, there is no substantial evidence that the order is necessary to protect correlative rights, but in fact, the order violates those rights.

Indeed, the order entered unnecessarily takes the Appellants' property for the benefit of others and is an unreasonable extension of the police power in the prevention of waste and thereby violates the constitutional rights of Appellants."

Appendix at 40a-41a.

Many cases have raised the constitutionality of oil and gas spacing and proration statutes; apparently none before this have considered the nature of the rights created by such statutes. In Oklahoma, the right of all interest owners to share *pro rata* in unit production is the *quid pro quo* for the loss of their individual rights to drill, *Ward* v. *Corporation Commission*, 501 P.2d 503 (Okla. 1972), and that *quid pro quo* is held to be constitutionally required. *Id.* at 507. Here, the State has suddenly shifted course and has taken from petitioners the benefit they were to receive for sharing their production. The taking of petitioners' property could hardly be clearer.

For instance, assuming that A, B, C and D each own the whole mineral interest in a quarter section, within a 640-acre unit and the unit well was drilled on A's tract, A has since shared production from the well; in fact, B, C and D have received 75% of that production. The Corporation Commission found, and the Oklahoma Supreme Court agreed, that A's well could not drain the entire 640-acre unit., based on testimony that each well was capable of draining only 160 acres. Thus, the shared production has come from the quarter section where the well is located. A has given up 3/4 of the production from his land in return for the expectation that all production from the unit would be through the unit well in which he is entitled by law to share. He is now deprived of this right to participate in production from B, C and D unless Oklahoma's action is reversed.

Had Oklahoma, in originally spacing this area, required the owners of interests in the quarter sections where wells have been drilled to share production with their neighbors in the other three quarter sections while permitting the owners in those three to drill their own wells and retain all the production, surely no one could dispute that a taking had occurred. Yet, that is precisely the situation which Oklahoma has now retroactively created by this Order.

Moreover, since the purpose of the applications here was to force cancellation of petitioners' leases, something the Commission has no power to do directly, it would be naive to ignore the impact of this Order on leasehold rights. Even though petitioners may well succeed in preserving all

their leases, they will, if this Order is affirmed, do so only at huge expense which is entirely unjustified by any legitimate state interest.

State action that affects private property rights is a valid exercise of police power only if it is reasonably necessary to the interest of the public generally and not unduly oppressive. *Penn Central Transportation Co.* v. *New York*, 438 U.S. 104 (1978); *Goldblatt* v. *Hempstead*, 369 U.S. 590, 594 (1962); *Lawton* v. *Steele*, 152 U.S. 133, 137 (1894). *See San Diego Gas & Electric Co.* v. *San Diego*, 450 U.S. 621, 646-663 (1981) (Brennan, J., dissenting from dismissal for lack of a final judgment). Quoting *Lawton*, this Court stated in *Goldblatt:*

> "The classic statement of the rule . . . is still valid today:
>
> > 'To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.' "

Goldblatt v. *Hempstead*, 369 U.S. at 594-595.

This Court has identified a number of considerations that are relevant here:

1. Economic impact on the claimaint. *See Penn Central Transport Co.* v. *New York*, 438 U.S. at 124; *San Diego Gas & Electric Co.* v. *San Diego*, 450 U.S. at 648 (Brennan, J., dissenting); *Kaiser Aetna* v. *United States* 444 U.S. at 175.

2. Interference with reasonable investment-backed expectations. *See id.*

3. Availability and effectiveness of less drastic alternatives. *See Goldblatt* v. *Hempstead*, 369 U.S. at 595.

4. Loss claimants will suffer. *See id.*

The Commission's order does not withstand analysis with respect to any of these matters. It ignores the economic impact on petitioners, the interference with reasonable investment-backed expectations resulting from years of operation under the prior spacing, and the loss petitioners will suffer. The availability of a less drastic alternative, increased density, is rejected by the Commission on ephemeral grounds.

As Justice Brennan stated, in dissenting from dismissal for want of a final judgment in *San Diego Gas & Electric Co.* v. *San Diego*, 450 U.S. at 640:

> "The principle applied in all these cases has its source in Justice Holmes' opinion for the Court in Pennsylvania Coal Co. v. Mahon, 260 US 393, 415 (1922) in which he stated: 'The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.' "

This Order goes too far.

2. Order No. 148243 Is Not a Valid Exercise of Police Powers.

Section 87.2 authorizes the State to act to modify spacing units or increase density upon evidence that the action will: (i) prevent or assist in preventing waste; or (ii) protect correlative rights of persons interested. While these obviously constitute legitimate State interests, the action taken is not rationally related to the furtherance of either.

The issue of protection of correlative rights can be disposed of without extensive argument. The destruction of the existing units and their replacement with smaller ones works an obvious disruption of correlative rights which increasing density would not. Petitioners do not read either the Corporation Commission or the Oklahoma Court as suggesting to the contrary.

In truth, it is clear that the Commission order and its affirmance were based on the notion that increased density relied on the discretion of the lessee to instigate an application and that respacing avoided that problem. Thus, the conclusion was reached that the choice of respacing furthered uniform development and therefore assisted in prevention of waste. As the Court stated:

> "The Commission concluded that the protestants desire to have further development on an increased density basis upon application by an owner of a unit when he determines that such action should be taken. The Commission concluded leaving that decision to the individual unit owners, under the circumstances, amounts to an indirect delegation of its duty to oversee prevention of waste and protection of correlative rights."

Appendix at 21a.

The Commission Order, at page 21, is even clearer.

> "[T]he Commission [may] not act in derogation of its interest, duty and responsibility by such an indirect delegation of its duty and responsibility to any owner whose subjective interests may be in conflict with the ends of waste prevention or correlative rights protection."

Appendix at 78a.

Both halves of the Commission-Court equation are flatly, incontrovertibly wrong. First, increased density is not at the mercy of lessees whose interest conflicts with that of the State. Second, development under respacing is subject to precisely the same contingencies as development under intensification of drilling.

The notion that relying on increased density is an indirect delegation of the Commission's authority is absurd. There are two steps that must concur before any well is drilled. First, the Commission must permit the well to be drilled. This it does either by spacing which authorizes one well per unit or by increasing density which authorizes as many wells in a unit as the Commission sees fit. Second, the person owning the right to drill must decide it is in his economic interest to drill.

Either respacing or increasing permitted density to four wells per unit, one in each quarter section, would result in the same legal authority for the drilling of the same number of wells. Thus, the two remedies are manifestly the same on this point. To the extent the Commission may have been suggesting that it would need to await a lessee's application for increased density, the Commission ignored three facts. First, there was already pending respondents'

application under which the Commission was empowered to order the increased density[4] since §87.1 authorized either decreasing the size of units or increasing density on the same evidentiary sharing. Second, increased density applications may be filed not only by a lessee, but by any person owning part of the mineral interest, any person owning a right to drill, or the Commission's own Conservation Officer. 52 Okla. Stat. (1981), §87.1. Third, if the Commission's concern was that a lessee would have no incentive to drill additional wells, Oklahoma law requires a lessee to drill such wells as may be necessary for full development, or face cancellation of his lease. *Vincent* v. *Tideway Oil Programs, Inc.*, 620 P.2d 910 (Okla. 1980).

3. When a State Agency Vacates an Order and Policy of Long Standing, Due Process Requires That It Articulate the Basis for Its Actions Sufficiently to Permit Judicial Review.

This Court has established the principle that agency conduct seriously impairing long-standing rights cannot be implemented without reasoned justification. *See Atchison, Topeka & Santa Fe Ry. Co.* v. *Wichita Board of Trade*, 412 U.S. 800, 808 (1973); *Secretary of Agriculture* v. *United States*, 347 U.S. 645 (1954). Under the Fourteenth Amendment, the Oklahoma Corporation Commission enjoys no greater latitude than does a federal administrative agency, whose standard this Court has said "coincides with that of

[4] In argument before the Commission, petitioners asked the Commission to increase authorized density to four wells per section, as an alternative to respacing, for all lands covered by the respacing application.

the Constitution." *See F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 582, 586 (1942). This Court has required that the agency reasonably explain its choice of remedies and justify any departure from prior practice or policy.

In *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156 (1962), the Interstate Commerce Commission dealt with a service interruption due to labor unrest by certificating a new carrier rather than issuing a cease and desist order, but failed to articulate any rational explanation for its choice.

The Court refused to allow the agency to choose the more drastic remedy without rationally explaining why:

> "Here the Commission made no findings specifically directed to the choice between two vastly different remedies with vastly different consequences to the [affected parties] and the public. Nor did it articulate any rational connection between the facts found and the choice made."

Id. at 165.

The Oklahoma Corporation Commission committed the same error.

The only reason articulated by the Commission for vacating the existing orders was to avoid the "indirect delegation" of the implementation of police power objectives to "any owner" whose interests might conflict with the Commission's stated objectives. Due process requires more than a vague reference to unnamed "owners" and unidentified "subjective interests." Moreover, as argued above, this rationale provides no support for the remedy chosen.

4. Oklahoma's Action Impairs Petitioners' Contracts in Violation of Article I, §10.

The Contract Clause limits the power of the state to impose substantial impairment of contractual relations unless necessary to meet an important general social problem. *Allied Structural Steel Co.* v. *Spannaus*, 438 U.S. 234 (1978); *United States Trust Co.* v. *New Jersey*, 431 U.S. 1 (1977).

In *Allied* the Court invalidated a Minnesota statute which increased the obligation under pre-existing pension plans of employers who either terminated the plan or closed a Minnesota office. In essence, the statute increased the financial burdens on one party to a contractual relationship. The Court stated:

> "The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to careful examination of the nature and purpose of the state legislation."

438 U.S. at 245.

Allied identified four factors discernible from prior decisions which demonstrated the invalidity of the Minnesota pension law: (1) the lack of a broad social problem which the enactment was to remedy; (2) operation in a new area of state regulation; (3) permanent and immediate, as opposed to temporary, impairment; (4) narrow class of those affected. *Allied*, 438 U.S. at 250. Those factors likewise are present here.

Of similar import is *United States Trust*, *supra*, where the Court voided a New Jersey statute deemed to impair

the contractural rights of holders of New York-New Jersey Port Authority bonds. The bonds had been purchased in reliance on a limitation on the ratio of deficit incurred by the Authority in running the PATH train system to the reserve fund for the Port Authority bonds. This Court struck down a statute which deleted the limitation, and thus impaired the bondholders' contracts by decreasing the security of their investments.

The impairment here is far more severe than those struck down in *Allied* and *United States Trust*. The mineral owner on whose tract each unit well was drilled along with his lessee has shared the production from that well with his neighbors in the other three quarter sections. Now, owners and lessees who have surrendered 3/4 of their own reserves have lost their legal right to share in production from the remaining 3/4 of the established unit lands. The State, having concluded that the well drains only A's tract, authorizes B, C and D to drill their own wells, and denies A any share of these wells at all. Of course, a lessee owning only a lease covering the drillsite is in precisely the same position.

Without denigrating the importance of the State's interest in promoting the exploitation of its resources consistently with avoiding waste, it can hardly be equated to the "important social problem(s)" found to justify past impairments, such as the need for emergency homeowner protection from mortgage defaults in *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934).

More importantly, the impairment here is neither necessary to the achievement of Oklahoma's interest nor tail-

ored so as to wreak the minimum impairment of contract rights consistent with Oklahoma's objective.

Deleting the existing spacing units serves the State's objective of uniform development in only an indirect way at best. It authorizes, but does not require, the drilling of an additional well in each quarter section not currently containing one. The decision whether or not to drill is left to the economic judgment of whoever owns the right to drill. Thus, despite the drastic impairment of contract rights involved, there is no assurance that attainment of the State's objective will be furthered.

This underlines the availability of a far less drastic alternative which equally serves the State's interest. Oklahoma could have increased the allowable density of drilling within the existing units. Increasing the density would have authorized, without requiring, additional wells and committed the actual decision to drill to the sound economic judgment of the interest owners involved. In other words, increasing density has precisely the same legal effect on further development as respacing without any impairment of contract rights.

Moreover, both before and after this case, Oklahoma consistently has chosen to increase density rather than respace because increased density does not impair contract rights. On April 27, 1979, the Corporation Commission in Order No. 152489, recognized the abberational nature of the state action in this case:

> "[I]t has been the policy of the Commission, where there has been a sharing of production to intensify drilling rather than re-spacing. The recent Garfield

> County order [Order No. 148243 involved here] is an exception to long established policy."

Appendix at 96a.

Since that exception to established policy unnecessarily works a substantial impairment of petitioners' contract rights, it violates the Contract Clause.

CONCLUSION

For the foregoing reasons, petitioners Union Texas Petroleum, *et al.*, respectfully submit that this Court should grant this Petition for Writ of Certiorari.

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Nos. _____ and _____

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

UNION TEXAS PETROLEUM, a DIVISION of ALLIED CHEMICAL CORPORATION, et al.,

Petitioners,

v.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

APPENDIX TO PETITIONS FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

UNION TEXAS PETROLEUM, A Division of Allied Chemical Corporation; CHAMPLIN PETROLEUM COMPANY; ATLANTIC RICHFIELD COMPANY; AMERADA HESS CORPORATION; EASON OIL COMPANY; HARPER OIL COMPANY; SINGER-FLEISCHAKER OIL OPERATING COMPANY, INC; OKLAHOMA NATURAL GAS COMPANY; HENRY H. GUNGOLL ASSOCIATES; L. O. WARD; CARL E. GUNGOLL; WOODS PETROLEUM CORPORATION; ODESSA NATURAL CORPORATION; MACK OIL COMPANY; OKMAR OIL CORPORATION and LADD PETROLEUM CORPORATION,	)
Appellants,	) No. 53,181 (Surviving number).
v.	) (Nos. 53,226, 53,227 and 53,259 consolidated)
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, HARVEY W. DIERKSEN, et al.	)
Appellees.	)

APPEAL FROM THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

In an application for an order modifying a previous drilling and spacing unit order of the Corporation Commission, applicant sought to de-space one-section units and respace those units at 160-acre parcels, alleging change of conditions and change of knowledge of conditions. The Corporation Commission granted the requested relief. Protestants allege such an order of modification is not supported by substantial evidence and was infirm by virtue of improper notice to certain parties, and they prosecute this appeal.

REVERSED IN PART; AFFIRMED IN PART

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Jan Eric Cartwright, Esq. Attorney General, State of Oklahoma Oklahoma City, Oklahoma	For Corporation Commission of the State of Oklahoma.

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Oklahoma City, Oklahoma For Harvey W. Dierksen, et al.

Appellees.

HARGRAVE, J.

This is an appeal from Order No. 148243 of the Corporation Commission of the State of Oklahoma dated January 3, 1979. That order vacated eighty-eight 640-acre drilling and spacing units, and established 160-acre drilling and spacing units. One hundred eleven applicants joined in the application which produced this order, and in that application they alleged that the prior orders of the Corporation Commission would demonstrate that the Mississippian formation constituted a single common source of supply in the region covered by the application and that the prior orders clearly demonstrated that there had been substantial change of conditions or knowledge of conditions as to that common source of supply, and that in order to prevent waste and protect correlative rights, that change in knowledge of conditions required that the previously existing 640-acre drilling and spacing units be vacated and that drilling and spacing units be established which created 160-acre drilling and spacing units for the Mississippian.

The Mississippian formation underlying the area covered by this application is a gas producer which produces increasing amounts of oil as proportionate to total production along the southeastern portion of the area covered by the application. In that southeasterly

portion there have been in the past a number of additional wells drilled on the basis of applications granted on an increased density basis by virtue of the oil production there had. The applicants sought to establish a change in knowledge of conditions underlying the land encompassed in the application and that that change in knowledge of conditions established that 640-acre Mississippian units were incapable of draining the entire formation in the area.

The appellants resisted the application to vacate the 640-acre spacing units and establish 160-acre drilling and spacing units, alleging there had been no substantial change in conditions and thus the application constituted a collateral attack on previous order of the Corporation Commission. Additionally, the appellants alleged that the Mississippian formation throughout this area is, in part, productive of oil as well as gas and the proper method to proceed upon that change in condition was by an order increasing the density of the drilling in the previously existing 640-acre units, noting that the spacing and respacing on proof of change of condition is contrary to the historical policy of the Commission which has been to increase density rather than vacate units and reestablish on the basis of smaller acreage. Appellants Tenneco Oil Company and Union Oil Company of California argue in their appeal that the subject order must be vacated because it was entered by the Corporation Commission outside of the regular pursuit of its authority. The basis of such a proposition is that the June 13, 1978 application of the appellee, which is the original application producing the order upon which this appeal is based, failed to list the appellants Tenneco and Union then owning interests in the area sought to be de-spaced, and that those two appellants had received no notice of the pro-

ceedings. Despite this lack of notice, Union and Tenneco made a special appearance before the Commission prior to the hearing on the order objecting to the jurisdiction of the Commission on that basis and requesting the application be dismissed. Argument was heard prior to the hearing on the merits and the motion to dismiss was denied by the Commission's order of July 7, 1978. This failure to properly serve Union and Tenneco allegedly resulted in a violation of the Commission's own rules and regulations and of the appellants' right to due process, under the line of cases arising out of *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).*

Appellants Union Texas Petroleum, a division of Allied Chemical Corporation, Champlin Petroleum Company, Atlantic Richfield Company, Amerada Hess Corporation, Eason Oil Company, Harper Oil Company, Singer-Fleischaker Oil Operating Company, Inc., Oklahoma Natural Gas Company, Henry H. Gungoll Associates, L. O. Ward, Carl E. Gungoll, Woods Petroleum Corporation, Odessa Natural Corporation, Mack Oil Company, Okmar Oil Corporation, and Ladd Petroleum Corporation, raise four propositions of error for disposition in their appeal. First, that there is no substantial evidence showing a change in conditions or knowledge of conditions which would authorize the Corporation Commission to vacate its prior 640-acre drilling and spacing unit order. The second point is that the decision of the Commission to destroy the 640-acre drilling and spacing units and thereupon establish 160-acre units is an arbitrary act which violates the vested rights of the owners of the oil and gas leases held by unit production and the vested rights of the royalty owners. Included in this point is the assertion

that there is no evidence to support the Commission's choice from among the two statutory remedies of permitting increased density of drilling or vacation of the established drilling units and creation of smaller drilling and spacing units in their place. The third point made by these appellants is that the order fails to include some 640-acre drilling and spacing units in the same common source of supply, thereby violating the correlative rights of the owners. The fourth point made in this appeal by these appellants is that the applicants did not comply with the rules of the Commission and that proper response to these failures by the Commission should have been to dismiss the application upon motion made prior to commencement of the hearing.

The orders of the Corporation Commission amended by the order now on appeal start with an order establishing 640-acre drilling and spacing units for the Mississippian gas and gas condensate common source of supply within a 40 square mile area in Major and Garfield Counties dated June 22, 1962. As of that date, only two wells had been completed in the area. That order finds one well adequately drains 640 acres. A year and a half later, the Corporation Commission found in its Order No. 53477 that Sec. 26, T22N, R8W, comprising a 640-acre drilling and spacing unit, was in fact oil productive, and further found that three additional wells were necessary to drain that unit. Those wells were permitted by the order and were found necessary to effect drainage of the section, and to date, only two of the three authorized wells have been drilled, the latter of those two having been drilled in 1978. A later order found the Mississippian in this area to be a combination oil and gas reservoir. The Corporation Commission's Order No. 50337 established 640-

acre drilling and spacing units for the Mississippian as gas and gas condensate common source of supply for a nine square mile area in Garfield County, located one mile from the area covered by Order 49133. The order now appealed from establishes as one common source of supply the area as covered in Order No. 49133 and Order No. 50337. The findings of the Corporation Commission incorporated in the now-appealed Order No. 148243 set forth the following:

> When Previous Order No. 49133 was issued only two wells had been drilled within the area. When Order No. 50337 was issued, only one well had been drilled within the covered area. Six hundred and forty acre drilling and spacing units were first established because the Mississippian was indicated to be gas and gas condensate common sources of supply, and it was then concluded that one well could be expected to effectively drain the recoverable gas and the condensate from those 640-acre units. These two initial orders cover the Mississippian, a common source of supply, although the orders treated the areas as separate from each other. At the time of the issuance of these two orders, it could not have been reasonably foreseen that both oil and gas would be found in the areas. There has been a substantial change in conditions and knowledge of conditions in the Mississippian Lime as to the hydrocarbon saturation, oil, gas and gas condensate. There has also been a substantial change in knowledge of conditions relating to the effective drainage radius of the well sunk to the Mississippian Lime and of the attributes of such formation, particularly porosity, permeability, water saturation, hydrocarbon saturation, pay thickness and lithography.

The Commission also found that there had been a substantial change in the orderly development of the

area by the necessary granting of numerous exceptions to well density and drilling and spacing unit size, irrespective of the pattern contemplated by the issuances of Orders No. 49133 and 50337. The Commission then determined that the development of the Mississippian Lime in this area viewed in respect to the production of wells already drilled in conjunction with the drilling and production of wells which will be required in the future demonstrates that a more orderly administration of the area is necessary to assure that those wells reasonably required to prevent waste and protect the correlative rights can or will be drilled. The Commission's conclusions delineate the following:

> The evidence of applicants and of the protestants is comparable on the point of the conditions and knowledge of conditions in the Mississippian Lime when the two orders, No. 49133 and 50337, were issued. Similarly, the evidence is comparable when viewed from the standpoint of the now known conditions and knowledge of conditions. However, despite comparable knowledge derived from both historical and current development in operations the two parties differ as to the most reasonable and equitable basis for future orderly development. Protestants have been granted numerous exceptions to Orders 49133 and 50337 as amended. Those exceptions relate to density and variation of drilling unit size upon allegations and proof that there had been a change in conditions or a change in knowledge of conditions in the formation. However, they now contend there has been no change of conditions or knowledge of conditions with respect to the 640-acre units.

The order continues, noting the protestants have urged the appropriate statutory remedy (of the two statutorily provided) is to further develop the area on an in-

creased well density basis upon application of an owner in the unit. The order then notes the interest of the Commission in the prevention of waste and protection of correlative rights requires that the Commission, in this instance, not delegate the responsibility for initiation of requests for increased density drilling to owners whose subjective interest in the premises may be in conflict with the ends of waste prevention or correlative rights protection. Further, the order recites there is substantial evidence to show that there has been and is now a change in conditions and knowledge of conditions, arising from the historical development in production and the area covered by the application. The change recited in the order is that the Mississippian Lime is far less conducive to effective and efficient drainage by one well on a 640-acre unit than it was thought and contemplated to be when Orders 49133 and 50337 were issued in 1962. The 640-acre unit was found not to be causing the Mississippian formation to be effectively and efficiently drained, resulting in unnecessary depletion and inefficient utilization of gas energy pressure in the common source of supply. The order further states that correlative rights cannot be thus protected by the continuation of 640-acre units. The Mississippian within the application area required 160-acre drilling and spacing units be established, and that a well on each 160-acre unit is necessary to effectively and efficiently drain a portion of the reservoir allocated to it. The order then concluded by vacating previous Order No. 49133 and 50337 as amended as to the Mississippian from 6,300 feet to 6,700 feet below the surface and as to 640-acre drilling and spacing units established by those orders. The order then established 160-acre drilling and spacing units. The order then noted: Piecemeal relief has been

given in prior times by increasing the density of wells upon the 640-acre units but the Commission concludes here that the establishment of 160-acre units is the proper relief, notwithstanding the fact that other relief is available based on substantial evidence herein.

Tenneco Oil Company and Union Oil Company of California propose the judgment must be vacated here on appeal because, as the transcript of the hearing on the motion to dismiss reveals, neither of these parties received notice of this proceeding. Additionally, they point out the affidavit of mailing notice filed June 29, 1978 indicates no notice was sent at all to Union and was sent to an improper address for Tenneco. These appellants state that notice and service of pleadings upon parties owning the right to participate must be made under Rule 8(d) (3)[1] of the Oklahoma Corporation Commission Rules of Practice. Failure to do so violates the last cited rule and does violence to appellants' right to due process under *Mullane v. Central Hanover Bank & Trust, supra, and Bomford v. Socony Mobil Oil Co., 440 P.2d 713 (Okla. 1968).* Appellants contend that the Corporation Commission is restricted in the valid ex-

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[1] "(d) Service in Special Cases:

. . .

(3) Applications for Amendment of Conservation Orders. At any time subsequent to the commencement and prior to the plugging and abandonment of a well upon a drilling and spacing unit, in lieu of service under subsection (b) of this rule, notice of hearing of an application to vacate, alter, modify or amend an order creating a drilling and spacing unit; to delete land from, increase or decrease the size of the drilling and spacing unit or for increased or decreased density of wells within the unit, shall be served by the applicant by regular mail *upon each person having the right to participate in production from the unit.* An affidavit shall be filed prior to hearing the application, stating the names and addresses of the persons so served, and that notice has been mailed pursuant to this rule." (Emphasis added)

ercise of its statutory authority to follow its administrative rules, and further that the Commission may not correctly act outside of those rules, citing *H. F. Wilcox Oil & Gas Co. v. State, 162 Okla. 89, 19 P.2d 347 (1933)*, and *Pacific Molasses Company v. F.T.C., 356 F.2d 386 (5th Cir. 1966)*. Appellants admittedly cite pertinent authority in *Mulane, supra*, and *Bomford, supra*. Although familiar, the footings of the *Mullane* decision are both abstractly fundamental and immediately indispensable to the resolution of the error here offered. This action involves the roots of the holding of *Mullane*, and the basis upon which it rests. In *Mullane*, at *339 U.S. 313, 70 S.Ct. 656-657*, the Supreme Court noted that although controversy has at times raged about the meaning of the due process clause, it affords at least a limitation requiring that a deprivation of life, liberty or property by adjudication be preceded by notice and the opportunity for a hearing appropriate to the nature of the action. The fundamental requisite of due process of law is the opportunity to be heard. *Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914)*. The opportunity to be heard is worthless without notification of the occasion requiring it, so that the affected individual may choose for himself whether to appear or default. In *Mullane, supra*, the court looked to the steps necessary to assure that notice is reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections, stating that the notice given must be such as is reasonably calculated to convey the required information in a timely manner so as to allow interested parties to make their appearance. The common thread of the opinion is reasonableness. "The criterion is not the possibility of conceivable injury, but the just and reasonable char-

acter of the requirements having reference to the subject with which the statute deals." *Mullane* at *339 U.S.* at *315*. The central point made in *Hanover* is that notice must be reasonably calculated to import actual knowledge of the suit.

Appellant Union Oil Company of California states it was never served by mail. The affidavits of mailing confirm that allegation. Appellant Tenneco Oil Company states service upon it was improper in that "the notice sent to Tenneco was improperly addressed." There is no allegation in the briefs, or lengthy record of this appeal, which indicates there was any prejudice resulting from the improper address on Tenneco's notice. The record indicates service by mailing was made. If the incorrect address resulted in failure to give notice that fact should have been raised. The appellant, Tenneco, has not alleged in the proceedings before the Commission that the improper address resulted in failure to impart notice. A mere defect in formal style or nomenclature will not invalidate service of process unless it actually resulted in failure to give notice, as can be discerned from the excerpts from *Mullane* which demonstrate the inquiry is centered on what steps are necessary to impart actual notice, and not formalistic ritual of service of process.

Here the appellant has offered as a jurisdictional error the mailing of notice to Tenneco at an incorrect address. The record discloses publication notice in Oklahoma County and the two counties in which the land is located, as well as a mailing of notice to Tenneco. Tenneco's mailing address utilized here was the "Cuidad Building." Whether this address is correct or not is not a matter disclosed by the record on this appeal. No atttempt was made to demonstrate the

erroneous nature of the address during the motion to dismiss when this jurisdictional error was offered. Such evidence would appear dehors the record, — therefore the record does not demonstrate that the order here appealed is void for failure to acquire jurisdiction over the person of Tenneco.

The error offered fits within the rationale of *Vinson v. Oklahoma City, 179 Okla. 590, 66 P.2d 933 (1937)*, wherein the failure to mail copies of the petition and notice there offered as reversible error do not appear on the face of the record. The judgment affirmatively negated the alleged failure, reciting that all defendants not answering or appearing have been served with summons personally or by publication. In reference to this aspect of the cause, the second Court syllabus holds that where service is obtained by publication and the judgment recites service is proper, the judgment is not void on its face, consequently an attack on the judgment on the basis of failure to mail a copy of the petition and publication notice can only be made under the provisions of the predecessor of 12 O.S. 1971 § 1031, Third. In *George v. Kinard, 84 Okla. 95, 202 P. 503 (1921)*, the Court stated a judgment is not void in the legal sense for want of jurisdiction, unless its invalidity and want of jurisdiction appear on the face of the record; it is voidable merely where the objection is raised because of failure to serve process.

Here the proceeding was questioned at its outset by Tenneco on the ground "that the notice was sent to the wrong address." However, no evidence of the extrinsic fact of the correct address or failure to impart notice arising from the address listed was offered, and thus the order of the Corporation Commission stands unchallenged by proof or offer of the extrinsic fact necessary to demonstrate its invalidity.

As to Union Oil of California, however, the holding of the recent case of *Cravens v. Corporation Commission, 613 P.2d 442, (Okla. 1980)*, is controlling. The record contains no notice of a mailing to this entity and thus the record demonstrates the Commission attempted to proceed against Union's interest in the absence of jurisdiction over the person of that entity. Accordingly, the order's attempt to adjudicate the rights of Union Oil of California is ineffective, and a nullity insofar as it purports to affect its interests.

The appellants Union Texas Petroleum, Champlin Petroleum, Atlantic Richfield, Amerada Hess, Eason Oil, Harper Oil, et al., direct their first proposition of error against the merits of the proceeding, arguing the Commission was without authority to amend its previous order inasmuch as the evidence disclosed no substantial change of conditions. This contention is based upon the prohibition contained in 52 O.S. 1971 § 111 against collateral attacks upon a final order of the Corporation Commission. Under that statute, and the cases arising out of it, such as *Wood Oil Co. v. Corporation Commission, 205 Okla. 534, 239 P.2d 1021 (1950)*, and *Phillips Petroleum Co. v. Corporation Commission, 461 P.2d 597 (1969)*, an application for an order of modification constitutes a collateral attack on the prior order where that modification is not based upon substantial evidence showing a change of conditions or knowledge of conditions arising since the last order. *Phillips Petroleum Company, supra*, illustrates the fact that the change of conditions or change in knowledge of conditions necessary to support an order of modification speaks to knowledge or conditions which did not obtain at the time the prior order was considered, and not to evidence of conditions or knowledge of conditions

which could have been brought forward at the time of the hearing on the prior order but were not considered at that time.

Phillips, supra, cites with approval 11 Okla. Law Rev. p. 125, "Modification Order Pertaining to a Common Source of Supply" at pp. 132 and 133, where the author of the article states: "Logically there are three kinds of change of condition possible. The first type of change of conditions is characterized by an actual change in the physical behaviour of the reservoir occasioned by development and depletion. Second is a change in the information gained from development or depletion experience which demonstrates that the original conclusions reached were incorrect as applied to the studied reservoir, and the third type is, in essence, a change in the technology used to exploit the reservoir, bringing to bear new concepts of waste and correlative rights." As the appellants recognize in their brief in chief, a change of condition alleged to justify a modification of a prior order of the Corporation Commission in this action was that new knowledge has been obtained that in this area a Mississippian gas well would not drain a 640-acre unit. The appellants contend there is no substantial evidence to sustain this finding and that the Commission should have denied the application on that basis.

The appellants also note that under *Harper Oil Co. v. Hayes, 431 P.2d 387, (Okla. 1967),* and *Meredith v. Corporation Commission, 368 P.2d 828, (Okla. 1961),* a spacing order of the Corporation Commission applies to all wells in the common source of supply whether or not an individual well turns out to be an oil well or a gas well. Appellants contend that it has been known for a considerable period of time that the Mississippian

formation in the area covered by the orders under consideration now has been capable of oil as well as gas production. This contention is intended to demonstrate there has been no change in knowledge of conditions obtaining since the prior orders, thus defeating the modification here granted. This known fact is not determinative of the issues here presented, which revolve around the inability of the 640-acre unit to be adequately drained by a single well in light of the additional experience with the character of the formation through drilling and production since the last orders were issued. This additional experience was recognized in *Phillips Petroleum Co. v. Corporation Commission, supra*, as a viable ground upon which to base a motion to modify a prior Corporation Commission order. Thus the inquiry remains: Is the order of modification supported by substantial evidence that a well in this locality of the Mississippian formation would not drain 640 acres? The order initially establishing 640-acre units, 49133, was issued after two wells had been completed in a 40-square mile area. Finding No. 4 from that order reads:

> "... One well will adequately drain the gas and gas condensate from said formation underlying 640 acres and that it is unnecessary to drill wells on a closer pattern."

The appellee contends that a substantial change in knowledge of conditions is established both by the primary evidence in this cause and by reference to the prior actions taken in the Corporation Commission by the appellants themselves. An example from testimony in this cause is taken from testimony of Mr. F., qualified as an expert without objection. He states Finding No. 5 in Corporation Commission's previous order 134466, in

his opinion, is generally applicable through all the units in this particular case. Finding No. 5 recites:

> "That applicants' Wuerflein No. 1 well is now 80 to 90% depleted and applicants' experience in the infield drilling of Mississippian wells on existing spacing units in the area which were previously developed by drilling one well has demonstrated that after the initial wells in each drilling and spacing unit were substantially depleted, the additional well in said drilling and spacing unit encountered initial shut-in bottom hole pressures and production volumes which were comparable with the initial shut-in bottom hole pressure and unit production volumes of the first wells drilled in each unit."

This same witness testified that, in his expert opinion, Paragraphs 7 and 8 of the findings in that same order would apply to each of the drilling and spacing units included within the purview of the action here appealed. Quoting from the record where the provisions of Paragraphs 7 and 8 are recited into the record:

> "Applicant has concluded that the infield wells drilled on each unit penetrated a portion of the Mississippian common source of supply that is not being adequately drained by the initial well and that the reservoir conditions in the Mississippian formation common source of supply underlying the lands described in the caption hereof are believed to be comparable in all respects to the conditions encountered in the units on which the Mississippian infield drilling has taken place in the area, so that it is reasonable to conclude that the Wuerflein Unit No. 1 well will not adequately and completely drain the recoverable gas in the Mississippian formation."

"It appears that the Wuerflein unit well will not adequately and completely drain the recoverable gas in the Mississippian formation underlying the unit, and that a second well on said formation will recover additional gas and associated hydrocarbons that will not be produced from existing wells."

The record also indicates a similar finding in Order No. 140576 wherein Finding No. 8 in that order states:

"That the testimony was that it is economically feasible to drill a third well on this spacing unit, and that a third well will recover additional oil and gas that would not otherwise be recovered by existing wells."

Mr. F. testified that in his expert opinion he would reach the same conclusion in consideration of each and all of the drilling and spacing units covered by this application on appeal.

The Commission's report included in Order # 148243 contains the better part of nine legal pages of single-space typing containing the history of modifications of the two base orders, 49133 and 54890. This history demonstrates that order 49133 has at times included twice as many section units as are presently under its purview. Twenty-five of these sections have been authorized additional wells and of these a substantial percentage have been altogether excluded from the original order. Many of these orders reviewed exclude sections from the order and establish smaller units or allow additional wells on the basis that the unit is unable to drain or on the basis that there is a change in production from gas to oil or in the knowledge of the mechanics of the formation.

The Commission's report shows that order 50337 originally formed 640-acre spacing on nine sections on the basis of one previously drilled well. Thereafter that order was extended and some sections then included were deleted later and spaced in 80-acre units for oil.

The Corporation Commission's order here appealed from then states the following after reviewing the history of the two orders:

1. The two parent orders, 49133 and 50337 were issued upon the strength of a total of three well drilling experiences showing a gas and gas condensate field.

2. At the time of issuance it could not reasonably have foreseen the mixed character of the common source or the numerous exceptions both to density of drilling and spacing unit size necessary to prevent waste and protect correlative rights.

3. There has been a substantial change in knowledge of conditions and characteristics of the formation, such as hydrocarbon saturation, oil and gas mix, effective drainage radius, and formation characteristics such as permeability, water saturation and effective pay thickness.

4. There has been a substantial change in the orderly development of the areas considered than was contemplated at the time the original orders were issued.

5. The conditions, and knowledge of them, now prevalent pertaining to the formation and current production as well as future production require a more orderly development than that had under the 640-acre unit and exception therefrom procedure.

The conclusions made by the Corporation Commission included in the order appealed here note that the protestants and applicants differ more in their proposed solutions to future equitable production than in substantive differences as to past and present known conditions of the Mississippian. The conclusions state that in past times, protestants have obtained exceptions by way of variations in drilling unit size and increased density orders on the basis of allegations of change of condition but now protestants are contending that there has been no change of condition justifying a modification order. The Commission concluded that the protestants desire to have further development on an increased density basis upon application by an owner of a unit when he determines that such action should be taken. The Commission concluded leaving that decision to the individual unit owners, under the circumstances, amounts to an indirect delegation of its duty to oversee prevention of waste and protection of correlative rights. Additionally the Commission concluded that the Mississippian is less conducive to drainage by 640-acre units than was contemplated when the parent orders were issued. The pressure depletion now experienced will not drain a 640-acre unit, resulting in efficient utilization of gas energy in the common source which will cause substantial quantities of oil, gas and condensate not to be recovered by a continued 640-acre unit. The Commission concluded that 160-acre units are reasonably required to drain the reservoir effectively and efficiently, notwithstanding the recognized existence of alternate forms of relief that may be available based upon the substantial evidence submitted.

The Commission heard evidence from both sides of the controversy, and various research methods and validity of statistical analyses, and conclusions drawn therefrom were closely contested and conflicting. The appellants' contention that there is no evidence of substantial change of condition upon which to base an order of modification is refuted by reference to the history of the Commission's orders relative to the area covered by the parent units, and by the allegations of change of condition made in earlier proceedings by some of the contestants herein. Those allegations of change of condition gave the Commission a factual basis upon which to modify orders and grant exceptions. Referring to appellants' Exhibit #40, we note that roughly thirty-four sections have been allowed additional wells in the area covered by the parent orders and fifty sections have been deleted from those orders for reasons which generally support showing of change in knowledge of the characteristics of the formation.

An objection to an order made by the Corporation Commission does not initiate an independent inquiry in this Court as to the factual support for the order under Article IX, Section 20, Oklahoma Constitution, unless an asserted violation of either state or federal constitutional principles is to be reviewed. *Anderson-Prichard Oil Corp. v. Corporation Com'n, 205 Okla. 672, 241 P.2d 363 (1951).* However, an allegation of violation of those constitutional principles by issuance of an order not supported by substantial evidence does not invoke an independent review of the evidence. *Cameron v. Corporation Commission, 414 P.2d 266 (Okla. 1966).*

The Commission has a wide discretion in the performance of its statutory duties, and this Court may not

substitute its judgment upon disputed factual determinations for that of the Commission but is restricted to a determination of substantial evidentiary support for the order issued under authority of the statutes. *In re: Application of Continental Oil Company, 376 P.2d 330 (1962).* Searching a record for substantial evidence supporting the order appealed does not entail a comparison of the parties' evidence to determine that which is most convincing but only that the evidence supportive of the order be considered to determine whether it implies a quality of proof inducing a conviction that the evidence furnished a substantial basis of facts from which the issue could be reasonably resolved. *Chenoweth v. Pan American Petroleum Corp., 382 P.2d 743 (Okla. 1963).* Substantial evidence has been additionally outlined as something more than a scintilla; possessing something of substance and of relevant consequence carrying with it a fitness to induce conviction, but remains such that reasonable men may fairly differ on the point of establishing the case. A determination of substantial evidentiary support does not require weighing the evidence but only a measurement of the supportive points to determine whether the criterion of substantiality is present. *Central Okla. Freight Lines v. Corporation Com'n, 484 P.2d 877, 879 (Okla. 1971).*

A review of supportive facts here present compels the conclusion that the order is supported by substantial evidence. Previous Corporation Commission orders have granted deletions and increased density orders to some of the appellants on the basis of change in knowledge of conditions and these changes have been made on approximately half the acreage comprising the area covered by the two parent orders and this order.

Appellants object to the order here issued on the additional basis that there is no substantial evidence to support the Commission's action of ordering deletion of the large units as opposed to ordering increased density drilling on established units. Such an allegation of error is insufficient to disturb the Commission's order on the basis of statutory authority and the evidence disclosed in the record. Factually, the record contains indicia that for extended periods of time, Commission orders allowing additional wells on the basis of inability to recover known reserves have not been carried out. Known inability to recover product and protect correlative rights after a demonstrated change in knowledge of conditions has not been remedied in the area by past orders to increase density, and under 52 O.S. Supp. 1978 § 87.1d, the alternative remedy granted here is decreasing the size of the well units. That portion of the last mentioned statute reads:

> The Commission shall have jurisdiction upon the filing of a proper application therefor, and upon notice given as provided in subsection (a) above, to decrease the size of the well spacing units or to permit additional wells to be drilled within the established units, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of wastes prohibited by statute, or any of said wastes, or will protect or assist in protecting the correlative rights of persons interested in said common source . . .

Appellants cite *Grison Oil Corp. v. Corporation Commission, 186 Okla. 548, 99 P.2d 134 (1940)*, as supportive of the proposition that private rights should be interfered with as little as possible where such disruption is necessitated by an exercise of the police power

in the prevention of waste. It would be unusual to encounter a party disagreeable to such a statement. The Commission's conclusion that past density applications by owners in the unit have not uniformly developed the common source, and have not been carried out with dispatch, negates the allegation that both statutory remedies are equally suited to the facts, and substantial evidence supports the choice of alternatives made by the Commission.

Appellants additionally contend the Commission's order respacing these sections as 160-acre units must be reversed by virtue of the Commission's failure to respace the entire common source. As the exhibits demonstrate, the order here appealed covers the center of the two parent orders, while the parent orders extend southwest and north of the order appealed. Prior orders have stated that both parent orders cover the same common source.

As early as the motion to dismiss the Commission was requested to proceed on a piecemeal basis, one section at a time. At the hearing on the merits, the appellants also objected to consideration of such a large area in one proceeding. This was done both by reference to the burden laid on the parties by entertainment of a modification application on a 92-section area, and by objection to testimony on the basis that expert evidence should be limited in impact to the unit from which the engineering data was gathered. Appellants actively requested the Commission to consider the modification request on a piecemeal basis, but now seek reversal of the order on the ground that the one proceeding did not encompass the entire common source. Given this position taken in the hearings below, it is inappropriate to now allow reversal of the Commission's order on

grounds which directly conflict with the parties' position below. Parties to an action on appeal are not permitted to secure a reversal of a judgment upon error which they have invited and acquiesced in, or to assume an inconsistent position from that taken in the trial court. *Cimarron Valley Pipe Line Co. v. Holmes, 182 Okla. 450, 78 P.2d 403 (1938); Cities Service Oil Co. v. Merritt, 332 P.2d 677 (Okla. 1958).* As early as *Morrison v. Krouch, 141 Okla. 288, 285 P. 10 (1930),* the related principle was considered as firmly established. In *Morrison,* the first Court Syllabus reads: "It is a well-settled rule that a party to a suit, having proceeded in the trial court upon a theory and lost, will not be permitted, upon appeal to this court, to change his theory and seek to reverse a case upon a different theory." The rule emanates from the very heart of the purpose served by an appeal. In *Breene v. Crawford, 175 Okla. 186, 53 P.2d 244 (1935),* the Court held that a defendant will not be allowed to shift his ground of defense on appeal in order to present another defense not presented nor relied upon in the trial court. To allow such a traverse in theory at the appellate level thwarts the very basis of the appellate process. The purpose of an appeal is not to present an opportunity for a trial de novo, but to review the correctness of the rulings made upon the arguments of the trial court. The parties to an action, having presented their case for defense to the trial court upon a certain theory, are bound thereby and will not be permitted to change the theory of the case upon appeal. See also: *Knox v. Eason Oil Co., 190 Okla. 627, 126 P.2d 247 (1942); Louis Berkman Co. v. Unger Metals Corp., 190 Okla. 101, 121 P.2d 606 (1942); Foster v. Higginbotham, 186 Okla. 276, 97 P.2d 63 (1939); Secrest v. Williams, 185 Okla. 449, 94 P.2d 252 (1939); Cadwell v. Ryan, 185 Okla. 158, 90 P.2d 887 (1939); U.S. Fidelity & Guaran-*

ty Co. v. State ex rel. Shull, 169 Okla. 59, 36 P.2d 47 (1934); Ward v. Continental Ins. Corp., 169 Okla. 59, 36 P.2d 47 (1933); Cope v. Johnson, 123 Okla. 43, 251 P. 985 (1926).

The order of the Corporation Commission is determined to be supported by substantial competent evidence and is therefore affirmed; provided that no part thereof is valid insofar as it affects the rights and interests of Union Oil of California, and is reversed insofar as it attempts to adjudicate the rights of Union Oil of California.

REVERSED IN PART; AFFIRMED IN PART.

Barnes, V.C.J., Williams, Lavender, Doolin and Opala, JJ, Concur.

Irwin, C.J., Hodges and Simms, JJ., Dissent.

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, et al.,	)	
Appellants,	)	
v.	)	No. 53,181
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; and HARVEY W. DIERKSEN, et al.,	)	
Appellees.	)	

ORDER

Upon careful consideration and review of the appellants' motion for rehearing, this Court finds that said motion for review should be denied.

IT IS SO ORDERED.

DONE IN CONFERENCE BY THE SUPREME COURT THIS 8th day of March, 1982.

ROBERT E. LAVENDER,
Associate Justice

Concur: Lavender, Doolin, Hargrave, Opala and Wilson, JJ.
Dissent: Irwin, C.J., Barnes, V.C.J., Hodges and Simms, JJ.

IN THE SUPREME COURT OF
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UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, et al.,	)	
Appellants,	)	
vs.	)	NO. 53,181
THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; and HARVEY W. DIERKSEN, et al.,	)	
Appellees,	)	

DISSENTING OPINION BY BARNES, V.C.J.:

Upon rehearing in this cause and upon reconsideration of the opinion promulgated herein on July 21, 1981 (52 OBJ (Vol. 52 - No. 30) 1857), I hereby change my vote from "concur" and must respectfully "dissent".

My first departure from the Majority's conclusion pertains to the standard of review to be used in this case.

Article IX, Section 20, Oklahoma Constitution, makes two provisions relative to the duty and power of this Court in considering appeals from orders of the Corporation Commission. In appeals from orders of the Corporation Commission, "the review by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and sub-

stantial evidence." However, in those appeals involving an "asserted violation of any right of the parties" under either the State or Federal Constitution, "the Court shall exercise its own independent judgment as to both the law and the facts." Such independent review of the evidence is only invoked if Appellant points out "in what specific respect his constitutional rights have been violated" and if the constitutional violations are "clear-cut".[1] Appellants contend "that each of the 540-acre drilling and spacing units had been developed in the Mississippi Formation by the drilling of one or more wells, and the order of the Commission destroys existing equities of both the royalty owners and the owners of the oil and gas leasehold estate and takes their property for private use in violation of Section 23 of Article II of the Constitution of the State of Oklahoma and deprives them of their property without due process of law in violation of Article II, Section 7, of the Constitution of the State of Oklahoma, and in violation of the Fourteenth Amendment to the Constitution of the United States of America." Such asserted constitutional violations could not be more "specific" or "clear-cut", and therefore this Court must exercise its own independent judgment in this case as to the law and facts. Whether the order appealed from falls within the first or second category, to be valid it must be lawful and supported by competent substantial evidence.[2] It is my opinion that using either the standard of independent review of the evidence or the standard of substantial evidence, it is clear, as will be discussed later, that the order in question is invalid and should not stand.

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1. Cameron v. Corporation Commission, 414 P.2d 266 (1966); and Southern Union Gas Co. v. Texas County Irrigation & Water Resources Association, 564 P.2d 1004 (1977).
2. Anderson-Prichard Oil Corp. v. Corporation Commission, 241 P.2d 363 (1951).

Secondly, I disagree with the Majority's holding that there was substantial evidence to support the conclusion that the wells on each of the eighty-eight 640-acre units covered by the application were not draining the units. This is the claimed "new knowledge" and change of condition upon which the application and the order of the Commission depend. The case cited by the Majority, *Phillips Petroleum Co. v. Corporation Commission, 461 P. 2d 597 (1969)*, states:

> "... Because substituted substantive rights actually vest in the property owners by the force of such orders, the Oklahoma Supreme Court has laid down the rule that a modifying order will be condemned as a prohibitive collateral attack unless 'a substantial change of condition' has intervened between the dates of the existing and superseding orders."

The evidence reflects that the Mississippi Lime Formation underlying the area covered by the application is a heterogeneous reservoir. The southeasterly portion of the area covered by the application contains oil pods or oil pockets. It is known that there is a transition zone. A transition zone is an area where the wells produce both free oil and free gas. Everything north of the transition zone will be predominantly productive of gas, and everything south thereof will be predominantly productive of oil and gas. Appellants and Appellees agree that one well will not effectively drain the 640 acres in the oil area. Operators of the wells in the oil area had applied for and been granted permission to drill a number of additional wells in the drilling and spacing units lying within the oil "leg". The basis of the application for additional wells was that the oil reservoir underlying some of the drilling and spacing units could not be properly developed without the drilling of additional wells. A number of applications

for increased density within some of the drilling and spacing units in the southern portion of the formation were on file at the time the application in this cause was filed, but hearings were postponed and will not be heard until this case is decided.

The Commission's Order No. 148243 de-spacing the eighty-eight 640-acre units and the Majority's conclusion that such order was supported by substantial evidence are based on the proposition that new knowledge has been obtained which demonstrates that *none* of the Mississippi wells on *any* of the eighty-eight governmental sections covered by the order will effectively drain the units. This conclusion is based upon the testimony and calculations of Appellees' expert witnesses. Appellees' experts calculated volumetric estimates of gas in place and compared these estimates with pressure decline curve estimates of gas in place. From this comparison, the experts arrived at their estimate of the percentage of the 640-acre units that were being drained by the unit well.

A pressure decline curve will indicate how much gas will be produced from a particular well, but will not show the thickness or shape of the reservoir from which the gas will be produced. In a fractured reservoir, such as the Mississippi Formation, gas may travel considerable distance to reach the well and therefore the reservoir may or may not underlie the drilling and spacing units upon which the well is located, and may or may not be uniform in thickness. On the other hand, a volumetric estimate of gas in place makes the assumption that the entire drilling and spacing unit upon which the well is located is underlain with productive formation of equal thickness and ability to produce as that exposed in the wellbore. Put another way, an assumption is made that the same number of feet of pay

found in a particular well will be found throughout the 640-acre unit. Every engineer who testified specifically on the point testified that such an assumption in the Mississippi Formation has no validity and that it is impossible to make a valid volumetric estimate of gas in place in the Mississippi Formation. The conclusions of Appellees' experts that existing wells were not draining the 640-acre units were based on the fact that their volumetric estimates of gas in place beneath the drilling and spacing units showed that there was more gas under the units than indicated by the pressure decline curve of the unit wells. The statements made by Appellees' experts that none of the unit wells, in the gas area, is draining the unit depends upon the correctness of the volumetric estimates, and the evidence establishes that it is impossible to make a valid volumetric calculation of the Mississippi Formation in this area.[3].

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[3] The testimony of Mr. H. for the Appellants concerning the use of volumetric estimates is as follows:

"Q. Did you use the volumetric estimates on the Mississippi Lime wells?

A. I haven't used a volumetric estimate since the mid-1960s and I only tried it once to convince myself that it was not a logical approach.

Q. Why do you find that to be the case?

A. The quality of the logs that are available and the quality of the information to identify porosity and water saturation and net feet of pay is unacceptable for reserve estimates.

Q. Is there any validity at all in your opinion in the results that you might obtain from volumetric estimates in the Mississippi Lime?

A. No.

Q. Do you have an opinion that Mr. Benton's computer calculation of the drainage area?

A. I think the manner in which it was used is erroneous. It's a useful device but primarily what it did was to verify the pressure cumulative analysis that it was — if you examine the results of that and the results of pressure cumulative studies, you will see that there is a very good correlation between the two. And there should be because what it's doing is analyzing the performance of the well to date. But it requires entering an assumption as to the amount of net pay in the well in order to calculate drainage area, and if you don't know net pay, you can't calculate drainage area.

Q. So you are saying that the information that's provided is invalid and the results are invalid?

A. Yes."

Therefore, the Appellees' position that the unit wells would not drain the 640-acre units, which depends upon the comparison of an imperfect volumetric calculation with the reliable pressure decline curve predictions, is not supported by substantial evidence and should fail.

In addition, the testimony reflects that there are only five units in the predominantly gas area which have been penetrated in the Mississippi Formation by more than one wellbore. The evidence reflects that the data obtained from the second well on these five units (less recovery of gas from the second well; no second well has found virgin pressure which is indicative that drainage has occured) shows that the existing gas wells are draining the units.

The remaining units which have more than one well on them are in the oil area. Appellants make no contention that one well would effectively drain 640 acres in the oil area. In the oil area, where the operators had been given permission to drill for additional wells, the unit wells were not draining the oil and this was the reason for the applications to drill additional wells. The fact that a 640-acre unit within the predominantly oil area cannot be effectively drained by one well does not prove that a well on the gas portion of the reservoir will not drain the 640-acre unit.

Moreover, Appellants' expert, Mr. H., prepared an exhibit showing the gas/oil ratios of the cumulative production from the units within the area of interest as of January 1, 1978. These numbers were calculated by taking the cumulative gas production and dividing by the cumulative oil production. In the northern area all of the wells had a gas/oil ratio in excess of 75,000 to 1.

Mr. H. testified that "any well which has produced with a cumulative gas/oil ratio to date as high as 75,000 to 1 has to be called a gas well by anybody's definition." He further testified that in four of the units where there was an additional well that three of the four wells had shown no additional gas reserves would be recovered as a result of drilling the additional well, and these three wells appeared to be marginally economic or possibly uneconomic. He concluded that in the northern predominantly gas area one well would drain 640 acres.

I submit that either an independent review of the evidence or a review of the supportive facts compels the conclusion that there is no substantial evidence that one well in the gas portion of the reservoir will not drain a 640-acre unit, and therefore there is no change in knowledge of conditions. Without a change in knowledge of conditions supported by substantial evidence, the Commission's order is defective and cannot stand.

Thirdly, having decided that there is no substantial evidence of a change of conditions in the predominantly gas area, I cannot agree with the Majority's conclusion that the change of conditions in the oil area warrants de-spacing as opposed to increased density drilling. All parties agree that one well will not drain a 640-acre unit in the predominantly oil area. Therefore, there is substantial evidence of a change of condition in such area and the question then becomes one of deciding which statuatory remedy dealing with this change of condition is supported by substantial evidence. Appellants argue that the Commission's choice of de-spacing is not supported by substantial evidence as such choice permits waste and fails to protect correlative rights. They further argue that such choice is

unconstitutional as it is an unreasonable exercise of the police power which destroys the vested rights of the owners of the oil and gas leases held by unit production and the vested rights of the royalty owners under the tracts upon which the unit well is located, who have shared the production from the unit well with other owners in the 640-acre units for about fifteen years. I agree with Appellants' contentions based on case law, statutory authority, and the record evidence.

Section 87.1(d) provides in part:

> "The Commission shall have jurisdiction upon the filing of a proper application therefor, and and upon notice given as provided in Subsection (a) above, to *decrease the size of the well spacing units or to permit additional wells to be drilled within the established units*, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of waste prohibited by statute or any of said wastes, or will protect or assist in protecting the correlative rights of persons interested in said common source of supply. . . . " (Emphasis added)

The Commission is thus empowered where there is substantial evidence of a change of conditions or knowledge of conditions to either change the size of the existing drilling and spacing units or to permit the drilling of additional wells in existing drilling and spacing units where such action is necessary to prevent waste or protect correlative rights. The fact that the statute gives the Commission a choice of remedies shows recognition by the Legislature that in some instances the proper remedy is a change in spacing, and in other instances intensification of drilling in the existing units is the proper remedy. Having been given a

choice of remedies, it is incumbent upon the Commission to use the remedy which will best prevent waste and protect correlative rights. In *Denver Producing & Refining Co. v. State, 184 P.2d 961, at 964 (1947)*, we stated that: "In striking a balance between conservation of natural resources and protection of correlative rights, the latter is secondary and must yield to a reasonable exercise of the former."

Is the Commission's order necessary to prevent waste? The record evidence reflects that a change in spacing from 640-acre units to 160-acre units results in the drilling of many unnecessary wells in the predominantly gas area covered by the application, thus causing economic waste.[4] It is common knowledge that the price of gas from the 1960s to present has gone from twenty cents to about two dollars per MCF, and a billion cubic feet at two dollars per MCF will pay for a well costing $350,000.00, but it is still economic waste if the well is unnecessary. Appellees' experts testified that there would be more rapid development under de-spacing; however, the fact that there may be faster drilling if the leases are thrown up for grabs does not prove waste. Appellees' experts, in fact, testified that there would be no difference in the recovery of hydrocarbons whether the wells are drilled now or ten years from now. Admittedly, in the predominantly oil area, additional wells are neccessary in order to produce the oil; however, the record indicates that such wells are being applied for and drilled pursuant to orders of the Corporation Commission permitting increased density in the units. The Commission cannot assume that the operators are going to leave oil and gas in the ground

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[4] See Ward v. Corporation Commission, 470 P.2d 993 (1970).

that is economical to produce. However, if an operator fails to apply for increased density, the royalty owner is not without remedy. A royalty owner has the right to request intensification of drilling.[5] If the operator, after the Commission grants permission to drill an additional well does not drill one, the royalty owner may proceed in the District Court in an action for lease cancellation for failure to develop in the manner of a prudent operator. In addition, there is no guarantee that more rapid development would occur through de-spacing. Most de-spacing and increased density orders only *permit* additional wells to be drilled; but economic, reservoir engineering and geological factors are the actual determinants as to whether an operator chooses to drill. In response to arguments from oil and gas operators who coveted some of the acreage included in the 640-acre units, and in response to the plea of some mineral owners that development was proceeding at too slow a pace, the Corporation Commission elected to break up the 640-acre units without any substantial evidence that waste would occur if the 640-acre units were left intact.

Is the order necessary to protect correlative rights? It is my opinion that the order not only is not necessary to protect correlative rights, but destroys and violates the same. Mr. Howard H. Harris, the author of an article entitled "Modification of Corporation Commission Orders Pertaining to a Common Source of Supply", dated May, 1958, Vol. 11, Oklahoma Law Review 125, states at page 130:

"3. Each individual owner has the right:

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[5] Spaeth v. Corporation Commission, 597 P.2d 320 (1979).

A. To have the basic nature of its interests maintained and to have its contractual rights with other persons remain undisturbed, except insofar as abrogation is *absolutely necessary to effect accomplishment of the conservation objective;* . . . " (Emphasis added)

In concluding that smaller units are required to protect correlative rights, the Commission ignored the fact that the establishment of 160-acre units deprived the owners of existing leases, which were held by production of their property, and awarded them to the parties who had taken top leases in expectation that the Commission might be persuaded to enter such an order. The 640-acre unit wells have been in existence since the early 1960s and, but for the spacing orders, the owner or owners of the minerals under the land upon which the unit well is located would have received 100% of the royalty from the well. Because of the spacing orders, such owner has shared the royalty proceeds with the other mineral owners in the 640-acre unit. If the order of the Commission stands, such owner or owners will find that they now own 100% of the royalty attributable to the *partially* depleted unit well, and have been stripped of any participation in the production of any additional well or wells that may be drilled in the governmental section that formerly comprised the 640-acre unit. That parties who have shared their royalty under the compulsion of the statutory unit should be deprived of any right to share in the production from any additional wells that might be drilled in the unit acreage is a gross inequity and a violation of their vested rights. Thus, there is no substantial evidence that the order is necessary to protect correlative rights, but, in fact, the order violates those rights.

Indeed, the order entered unnecessarily takes the Appellants' property for the benefit of others and is an unreasonable extension of the police power in the prevention of waste and thereby violates the constitutional rights of Appellants. In *Oklahoma Natural Gas Co. v. Choctaw Gas Co., 236 P. 2d 970 (1951)*, we stated that:

> "Although private rights yield to the exercise of police power, they are not to be totally annihilated thereby, or interfered with to a greater extent than reasonably necessary, taking into consideration the real object to be accomplished."

Also, in *Cabot Carbon Co. v. Phillips Petroleum Co., 287 P. 2d 675 (1975)*, we stated at page 679 that:

> "The Corporation Commission's power to regulate the taking from the reservoir to prevent waste and protect correlative rights, even to fixing the price of production so taken, if necessary to accomplish these conservation purposes, does not extend to overturning private contracts where not necessary for such accomplishment."

In *Skinner v. State, 115 P. 2d 123 (1941), at page 126*, this Court said:

> " 'Due process' has a dual significance, as it pertains to procedure and substantive law. As to procedure it means 'notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case before a competent, impartial tribunal having jurisdiction of the cause. . . . In substantive law, due process may be characterized as a standard of reasonableness, and as such it is a limitation upon the exercise of the police power."

There was no substantial evidence that it was necessary or a reasonable exercise of the police power to decrease the size of the drilling and spacing units in order to prevent waste, and, by doing so, thereby terminate vested leasehold rights of lessees and the rights of certain royalty owners in their just share of production, instead of ordering increased well density. The action of the Commission was therefore arbitrary, invalid and unconstitutional in violation of Section 23 of Article II of the Constitution of the State of Oklahoma and deprives them of their property without due process of law in violation of Article II, Section 7, of the Constitution of the State of Oklahoma and in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Further, I cannot agree with the Majority Opinion's conclusion when it states there is substantial evidence to support the Commission's choice of a remedy to decrease because "past density applications by owners in the unit have not uniformly developed the common source, and have not been carried out with dispatch." There is no evidence in the record to support this conclusion.

With respect to the conclusion that past density applications have not resulted in the uniform development of the common source of supply, it should be noted that applications to increase density are submitted on a unit-by-unit basis, the obvious consequence of which is that there is not the same number of wells on each unit. Obviously, as stated before, in the gas area only one well is required, while on the oil portion of the area up to four wells may be required.

With respect to the conclusion that "past density applications have not been carried out with dispatch, the record is devoid of evidence to support this conclusion, except for the case of *Harper v. Hayes, 431 P. 2d 387 (1964)*, and, in fact, evidence in that case clearly contradicts such a conclusion. In every instance, except one, where an order was entered authorizing an additional well, a well was drilled. Only in *Harper* had the Commission entered an order permitting the drilling of additional wells in a 640-acre unit, where the permitted number of additional wells, at the time of the hearing in this case, had not been drilled. This was in Section 26-22N-8W. The initial well drilled in said section was an oil well, and Harper obtained permission to drill three more wells in the 640-acre unit on the theory that three more oil wells would result. The additional second well was a gas well. The two additional wells authorized were not drilled because it appeared that these would also be gas wells and therefore would not be necessary to drain the unit. Further, Appellees in their application did not request that Section 26 be de-spaced, although the evidence reflects that it is part of the same common course of supply. Thus, the sole instance of failure to drill additional wells applied for occurred in a 640-acre unit not covered by the application in this cause.

Fourthly, I am in agreement with Appellants' position that both in the hearings below and in this appeal that Appellee's application for de-spacing was defective because it failed to de-space the entire common source of supply. Appellants' position in this regard was based upon 52 O.S. Supp. 1978, § 87.1(a), which provides in pertinent part that the Commission:

"had the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or perspective common source of supply, of oil or gas within the State of Oklahoma; . . . or may establish, reestablish, or reform well spacing and drilling units of different sizes and shapes when the Commission determines that a common source of supply contains predominantly oil underlying an area or areas and contains predominantly gas underlying a different area or areas; provided further that the units in the predominantly oil area or areas shall be of approximately uniform size and shape, and the units in the predominantly gas area or areas shall be of approximately uniform size and shape, except that the units in the gas area or areas may be of nonuniform size and shape when they adjoin the units in the oil area or areas; . . . "

The record discloses that Appellees requested the Commission to establish smaller drilling and spacing units in only a portion of the subject common source of supply. Dismissals of various units occurred during the course of the proceeding. Relief requested by the Appellees was clearly contrary to the provisions of Section 87.1(a) unless all the common source of supply was involved, or unless there is a combination reservoir when the gas units and oil units are separately defined. The order appealed did not establish separate gas units and separate oil units.

Throughout the hearing and on appeal, Appellants urged an alternative position. They urged that the proper remedy in this case was additional well authorization. Additional well authorization is an alternative to respacing and is provided for in Section 87.1(a) as follows:

> "... Provided that the Commission may authorize the drilling of an additional well or wells on *any* spacing and drilling unit or units or any portion or portions thereof, *or* may establish, re-establish, or reform well spacing and drilling units...." (Emphasis added)

Thus, the statute *permits* additional well authorization in *less* than all of the units in a common source of supply, but *requires* all of the common source of supply to be involved in respacing.

The Majority Opinion is mistaken in its contention that Appellants urged a unit-by-unit consideration of the application for purposes of de-spacing, as well as for the purposes of additional well authorization (increased density). Because of this mistaken assumption, the Majority states that: "It is inappropriate to now allow reversal of the Commission's order on grounds which directly conflict with the parties' position below." Although Appellants never requested de-spacing, it was their contention that if de-spacing was undertaken, it would have to encompass the entire common source of supply. What Appellants did request was increased density which of necessity would be on a unit-by-unit basis.

Since 52 O.S. Supp. 1978, § 87.1(a), requires all of the common source of supply to be involved in de-spacing, the Commission's order is defective, and the order's failure to deal with the entire common source of supply is another reason for its reversal by this Court.

Lastly, although I do not disagree with the Majority's holding that the Commission lacked personal jurisdiction over Union Oil of California, I disagree with the consequential results reached by the Majority when

they conclude that no part of the Corporation Commission's order "is valid insofar as it affects the rights and interests of Union Oil of California, and is reversed insofar as it attempts to adjudicate the rights of Union Oil of California." The result of the Majority Opinion is to effectively change each 640-acre drilling and spacing unit in which Union has an interest into four 160-acre drilling and spacing units *as to every one of the 640-acre units except Union.* The effects and consequences are chaotic, leaving undetermined and uncertain the rights and liabilities of the parties in each such 160-acre unit as against Union, whose interest is still fixed on the basis of a 640-acre unit. Even if Union's interest is de minimus, the consequences are the same. For example, if Union owns an overriding royalty interest covering only one non-producing 160-acre unit, does the lessee on whose leasehold the former 640-acre unit well was located still have to continue to account to Union on the basis of a 640-acre unit? If Union owns a lease covering only one non-producing 160-acre unit, how can it terminate as to the lessor-royalty owners where the primary term has expired, but not terminate as to Union's lessee interest because the lease was within the former producing 640-acre unit? These disruptive consequences are yet another reason why the Commission's order cannot stand and should be reversed.

I am authorized to state that Justice Hodges and Justice Simms join me in this dissent.

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT: HARVEY W. DIERKSEN, ET AL.

IN THE MATTER OF ESTABLISHING DRILLING AND SPACING UNITS FOR THE MISSISSIPPIAN IN SECTIONS 2, 5 THRU 9, T21N, R8W; SECTIONS 11 THRU 14, 23 THRU 26, 35 and 36, T22N, R9W; SECTIONS 30 THRU 34, T23N, R7W; SECTIONS 31 THRU 36, T23N, R8W; SECTIONS 1 THRU 25, 27 THRU 34, AND SECTION 36, T22N, R8W; SECTIONS 3 THRU 25 and 27 THRU 34, T22N, R7W; ALL IN MAJOR AND GARFIELD COUNTIES, OKLAHOMA, AND IN THE MATTER OF VACATING ORDER NO. 49133 AS LAST AMENDED BY ORDER NO. 140746 (SO. 2933) INSOFAR AS SAID ORDERS COVER THE MISSISSIPPIAN AND SAID LANDS AND VACATING ORDER NO. 50337, AS LAST AMENDED BY ORDER NO. 138728 (SO. 3083) INSOFAR AS SAID ORDERS COVER THE MISSISSIPPIAN AND SAID LANDS.	) CAUSE CD NO.)) 54890)) ORDER NO.)) 148243)))))))))))))))))

REPORT OF THE COMMISSION

The above entitled and numbered Cause was first set for hearing before the Corporation Commission of

Oklahoma on July 10, 1978, at 10:00 a.m., in its Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, but was continued from time to time and heard on various definite dates pursuant to orders herein; sitting included Rex Privett, Chairman, Hamp Baker, Vice Chairman, Jan Eric Cartwright, Commissioner.

Barth P. Walker and Donald L. Worthington, Attorneys, appeared for the Applicants; James R. Cox, Attorney, appeared for various mineral owners; Patricia A. Moore, Attorney, appeared for Sun Oil Company; Guy E. Taylor, Attorney, appeared for Peninsula Resources Corporation; Duncan W. Holt, Jr., Attorney, appeared for Atlantic Richfield Company; Robert A. Miller, Attorney, appeared for Texas American Oil Corporation and Texas Oil & Gas Corp.; David G. Probst, Attorney, appeared for Harper Oil Company; C. Harold Thweatt, Attorney, appeared for Union Texas Petroleum Company, Champlin Petroleum Company and Eason Oil Company; Gordon Brown, Attorney, appeared for Henry Gungoll and Associates, Carl E. Gungoll, L.O. Ward, Ladd Petroleum Company, Woods Petroleum Company, Mack Oil Company, Odessa Natural Gas Company, and Okmar Oil Company; John R. Robertson, Jr., Attorney, appeared for Continental Oil Company, Viersen & Cochran, Creslenn Oil Company and Preston H. Alexander; Wyn Dee Baker, Attorney, appeared for Amerada Hess Corporation; William Scheurich and John A. Gaberino, Jr., Attorneys, appeared for Oklahoma Natural Gas Company; Russell Thompson, Attorney, appeared for Singer-Fleischaker Oil Operating Co., Inc. and Harper Oil Company; H. B. Watson, Jr., Attorney, entered a special appearance solely for the purpose of questioning the jurisdiction of the Commission for Tenneco Oil Company and Union Oil Company of California; Bryce Hodgden, Attorney,

appeared for Walter and Norma Hodgden; and Harvey Cody, Conservation Attorney, appeared for the Commission.

The Commission proceeded to hear said Cause and having received the evidence, oral, written, and exhibits, statements of interested parties, and arguments of counsel, all of which have been considered, the Commission therefore finds as follows:

FINDINGS

1. That this is the Application of Harvey W. Dierksen, et al, owners of the normal 1 / 8th royalty interest for an Order establishing proper drilling and spacing units for the Mississippian in Sections 2, 5 thru 9, T21N, R8W; Sections 11 thru 14, 23 thru 26, 35 and 36, T22N, R9W; Sections 30 thru 34, T23N, R7W; Sections 31 thru 36, T23N, R8W; Sections 1 thru 25, 27 thru 34, and Section 36, T22N, R8W; Sections 3 thru 25, and 27 thru 34, T22N, R7W; all in Major and Garfield Counties, Oklahoma, and in the matter of vacating Order No. 49133 as last amended by Order No. 140746 (So. 2933) insofar as said Orders cover the Mississippian and said lands and vacating Order No. 50337, as last amended by Order No. 138728 (So. 3083) insofar as said Orders cover the Mississippian and said lands.

2. That the Commission has jurisdiction of the Application filed herein and notice of the hearing has been given as required by law and rules of the Commission; that the Application herein is limited to the Mississippian common source of supply and all orders, references, and land setout herein relate to the Mississippian only.

3. That the area covered by the Application covers part of the area within the purview of Order No. 49133, as amended, and within the purview of Order No. 50337, as amended; that a proper perspective of the relief requested by the Application, coupled with protestants' contention that such relief should not be granted portends the necessity for a complete review of the Commission's administration and orders heretofore issued with respect thereto of the Mississippian within the areas of such Orders;

(a) Order No. 49133 and the series of Orders thereunder:

1. That the first drilling and spacing unit order in the area covered by the Application was issued on June 22, 1962, when Order No. 49133 established 640-acre drilling and spacing units for the Mississippian as a gas and gas condensate common source of supply in an area covering forty (40) governmental sections; namely, Sections 25 thru 36, T22N, R9W, Sections 1 thru 4, T21N, R9W, Sections 25 thru 36, T22N, R8W, and Sections 1 thru 12, T21N, R8W; that a portion of this area is only one mile south of the nine (9) section area first covered by Order No. 50337, which was issued only about five (5) months later, reviewed in paragraph 3(b) below; that Order No. 49133 in part finds:

"3. . . . there have been two wells completed . . . (and) a new and separate common source of supply of gas and gas condensate has been found to exist. . . .

"4. . . . that one well will adequately drain the gas and gas condensate from said forma-

tion underlying 640-acres and that it is unnecessary to drill wells on a closer pattern";

that drilling development, and production since the issuance of Order No. 50337, reviewed below, and Order No. 49133 have shown, in fact, that the Mississippian dips generally to the southwest and consists of a fractured (fractures run generally east and west) continuous geologic limestone interval, about 600 feet thick throughout the whole of the areas covered by Order No. 49133, as amended, and Order No. 50337, as amended; that the Mississippian is heterogenous lithologically and has highly variable porosity, permeability, water and hydrocarbon saturations, and pressure characteristics; that there is and has been continuous and contiguous development with producing wells throughout said areas so that the Mississippian is now known to be and is, in fact, a common source of supply throughout the areas covered by the Orders No. 49133 and No. 50337 mentioned, both as amended.

2. That the first amending Order to Order No. 49133 is Order No. 53477, dated December 3, 1963, which is about five (5) months after Order No. 49133 was issued and about three (3) weeks after Order No. 50337, reviewed below, was issued; Order No 53477 found that a well had been drilled in the SW/4 of Section 26, T22N, R8W, which had encountered oil in the Mississippian and the geologist witness then testified that in order "to efficiently and and effectively drain such section that applicant should be authorized to drill and complete three addi-

tional wells . . . in said section . . . "; those wells were authorized but, as of date of hearing in this Cause, about 15 years later, Harper Oil Company, the Operator of said Section 26, has drilled and is producing only two (2) of the additionally authorized wells, one of which was not drilled until 1978; that by Order No. 53828, dated January 8, 1964, an additional well was authorized for Harper Oil Company in Section 35, T22N, R8W, when the initial well in said Section 35, a gas well, was thought to be up-dip from a probable oil bearing portion of the Mississippian; that Order No. 54702, dated April 1, 1964, extended Order No. 49133 to include Sections 21 thru 24, T22N, R8W, and Sections 19, 30 and 31, T22N, R7W, making this area contiguous to that covered by Order No. 50337, issued November 15, 1962, and reviewed below, said Order No. 54702 finds:

> "5. . . . that the Mississippian formation covered by this Order contains a combination reservoir, some wells producing oil and some wells producing gas . . .";

3. That Order No. 55060, dated May 8, 1964, extended Order No. 49133 to include Sections 5 thru 36, T21N, R9W, Sections 1 thru 5 and 8 thru 12, T20N, R9W, after vacating 80-acre units as to some of said lands and in so doing found that, even though the wells in question produced both oil and gas, the wells should be classified as gas wells with 640-acre drilling and spacing units established therefor and found that

> "4. . . . Some evidence of lease expiration entered into this hearing, and it should be

noted from the outset that the Commission has no authority to consider leasing matters and such evidence has no place in a spacing application . . . ";

that Order No. 55756, dated July 14, 1964, authorized an additional well in Section 10, T21N, R8W, finding that "one well will not adequately drain the recoverable oil from said formation"; that Order No. 56259, dated September 15, 1964, authorized an additional well in Section 12, T21N, R8W, making a comparable finding; that Order No. 56600, October 21, 1964, authorized a second additional well in Section 35, T22N, R8W, finding that "one well will not drain" the unit;

4. That Order No. 56704, dated October 21, 1964, extended Order No. 49133 to include Sections 2 thru 11, 14 thru 20, T22N, R8W, finding that there were wells in the area and at that time showing the existence of oil production about two (2) miles to the north of the area which

"7. . . . create some doubt as to what the nature of the hydrocarbons will be when a well is drilled in the proposed area . . . ";

5. That Order No. 57124, dated December 18, 1964, extended Order No. 49133 to include Sections 4, 5, and 6, T21N, R7W, and Sections 20, 21, 28, 29 and 33, T22N, R7W; that Order No. 57805, dated February 26, 1965 authorized an additional well in Section 3, T21N, R8W, finding that

"4. . . . the Mississippi Lime reservoir here in question is erratic insofar as what kind of

hydrocarbons will be produced under a given area . . . ";

6. That Order No. 57891, dated March 12, 1965, excluded the Harper-Hayes unit No. 1 Well from the purview of Order No. 49133, reviewed above, that well was authorized along with two other additional wells to be drilled on Section 26, T22N, R8W, and declared that even though the well is producing from the Mississippian that it is not affected by Order No. 49133 which was declared to remain in effect as to the remainder of the Mississippian underlying said Section 26; the Order was overturned in *The Harper Oil Company v. Hayes*, 341 P.2d 387.

7. That Order No. 58106, dated March 31, 1965, extended Order No. 49133 to include Sections 14, 15, 22, 23, T22N, R7W; that Order No. 58330, dated April 21, 1965, authorized an additional well in Section 4, T21N, R8W; that Order No. 58407, dated April 28, 1965, excludes Section 8, T20N, R9W from the purview of Order No. 49133, as amended, finding that said Section "is predominantly underlain by oil" and established 80-acre units therefor; that Order No. 59124, dated June 4, 1965, amended Order No. 49133 to include Section 16, T20N, R9W; that Order No. 59138, dated June 11, 1965, authorized an additional well in Section 11, T21N, R8W, finding that a combination reservoir exists and "one well will not adequately drain the oil from said formation"; that Order No. 59139, dated June 24, 1965, authorized an additional well in Secion 25, T22N, R8W, finding that it is "difficult to determine whether a well, drilled to the Mis-

sissippi Lime in this area will be an oil well or a gas well"; this well has not been drilled;

8. That Order No. 59630, dated July 23, 1965, No. 59907, dated September 1, 1965, and No. 60530, dated November 2, 1965, extend Order No. 49133 to include more land while Order No. 61007, dated December 14, 1965, excludes Section 4, T21N, R7W, from purview of Order No. 57124 and established 80-acre units finding that "one well will not adequately drain the 640-acre unit"; that Order No 62048, dated March 25, 1966, No 62854, dated June 16, 1966, and Order No. 62988, dated June 17, 1966, extend Order No. 49133 to include additional lands; that Order No. 63177, dated July 18, 1966, exludes the SE/4 Section 5, T21N, R7W, from Order No. 49133 and establishes 80-acre units in said SE/4 and a 480-acre unit with the remainder of the Section finding the SE/4 as predominantly oil;

9. That Order No. 64052, dated September 15, 1966, excludes Section 21, T20N, R9W, from purview of Order No. 60530 because Section 21 is productive of oil and gas and established 80-acre units in said Section; that Order No. 64361, dated November 29, 1966, extends Order No. 49133 to include Section 3, T21N, R7W, and vacated 80-acre units therein; that by Order No. 64959, dated February 7, 1967, Field Rules relating to the production of gas were established; that Order No. 66581, dated July 26, 1967, No. 67192, dated October 11, 1967, and No. 67881, dated December 29, 1967, extend Order No. 49133 to include other lands; that Order No. 68619, dated March 27, 1968, authorized an addi-

tional well in Section 17, T22N, R6W, because the first well encountered a "porous section in the Mississippian formation . . . not encountered in other wells in surrounding sections . . . ";

10. That Order No. 69309, dated June 13, 1968, extends Order No. 49133 to include other land and established a 370-acre unit with respect to the N/2 of Section 2, T21N, R7W; that Order No. 69286, dated June 14, 1968, authorized an additional well in Section 10, T20N, R9W; that Order No. 69523, dated July 10, 1968, extends Order No. 49133 to include Section 22, T22N, R9W; that Order No. 70487, dated November 1, 1968, vacates Order No 49133 as to a Section and establishes 80-acre units in the E/2 thereof and a 320-acre unit in the W/2 thereof; that Order No. 70504, dated November 26, 1968, establishes a 480-acre gas unit in Section 14, T22N, R6W; that Orders No. 70511, dated December 3, 1968, No. 73967, dated May 13, 1969, and No. 74814, dated June 6, 1969, No. 75566, dated July 15, 1969, No. 75884, dated October 23, 1969, No. 80077, dated April 29, 1970, No. 81563, dated August 12, 1970, No. 82369, dated October 26, 1970, No. 83179, dated December 30, 1970, all delete lands from the purview of Order No. 49133 so as to establish 80-acre units for such lands finding, after development in the area, and on the lands, that said lands were predominantly oil and that additional wells were necessary.

11. That Order No. 84056, dated March 10, 1971, and No. 85435, dated June 17, 1971, extended Order No 49133 to include other lands; that Order No. 91255 excludes Sections 21, 22, and 27 through 30, T21N, R9W, and established 80-acre units therefor after wells drilled in the area indicate oil production; that Order No. 97153, dated April 24, 1973, Order No. 102152, dated January 2, 1974, and Order No. 102670, dated January 17, 1974, authorize, respectively, additional wells in Section 4, T21N, R8W, Sections 22 and 23, T22N, R6W, Sections 15, 21, and 24, T22N, R6W, finding that the additional wells are necessary to drain the Sections; that Order No. 106174, dated June 27, 1974, authorizes two additional wells in each of Sections 15, 21, 22, 23, and 24, T22N, R6W, finding that after wells had been drilled and after additional study that to substantially drain the Mississippi Lime common source of supply of its economically recoverable hydrocarbons four (4) wells to each governmental section are needed; that Order No. 106304, dated September 3, 1974, authorizes two additional wells in Section 20, T22N, R6W, after finding that one well had been drilled in said Section 20 and that it is now evident that said well has a "very limited drainage area," that said well "will not sufficiently drain and recover the produceable liquid hydrocarbons," that "the additional wells will encounter different fracture systems" and will drain areas that would "not be drained by the original well," and that a change of condition is shown to exist "from the production of the original well and the limited area of drainage of said well";

12. That Order No. 106305, dated September 3, 1974, No. 106306, dated September 3, 1974, No. 106256, dated September 3, 1974, permit additional wells in Sections 19, 16, and 17, T22N, R6W, respectively, making substantially the same findings as are quoted, next above; that Order No. 111740, dated March 21, 1975, excludes Section 27, T20N, R9W, from Order No. 49133, and establishes 80-acre units, predominantly oil; that Order No. 112773, dated May 15, 1975 authorized an additional well in Section 17, T22N, R6W; that Order No. 115945, dated October 17, 1975, authorized an additional well in Section 6, T21N, R7W; that Order No. 115871, dated October 14, 1975, excludes Section 11, T20N, R9W, from Order No. 49133 and establishes 80-acre units predominantly oil; that Order No. 116217, dated October 28, 1975, authorizes an additional well in Section 10, T20N, R9W, to fully develop the Section; that Order No. 116467, dated November 10, 1975, vacates Order No. 49133 as to Section 20, T20N, R9W, and establishes a 320-acre gas unit and 80-acre oil units in said Section; that Order No. 115944, dated October 17, 1975, authorizes an additional well in Section 33, T22N, R7W; that Order No. 118351, dated January 21, 1976, authorizes two additional wells in Sections 33 and 34, T21N, R9W; that Order No. 119955, dated March 17, 1976, authorized two additional wells in Section 12, T21N, R8W, where a combination reservoir is involved to prevent the loss of hydrocarbons;

13. That Order No. 120410, dated April 5, 1976, vacates Order No. 49133 after wells are drilled

in the area and creates no units; that Orders No. 120465, dated April 6, 1975, No. 120556, dated April 12, 1976, No. 120958, dated April 27, 1976, and No. 121314, dated May 12, 1976, permit additional wells, respectively, in Section 5, T21N, R7W, Section 32, T22N, R9W, and Section 1, T21N, R8W, where additional wells are needed to adequately and effectively drain the recoverable gas and gas condensate from the Mississipian; that Order No. 121486, dated May 19, 1976, extended Order No. 49133 to include Section 18, T21N, R8W; that Order No. 123489, dated August 9, 1976, excludes Section 13, T21N, R9W, from Order No. 55060 and establishes 80-acre units while Order No. 124290, dated September 17, 1976, excludes Section 10, T20N, R9W, from Order No. 49133, and established 160-acre units after wells in the area showed that the wells were not draining 640 acres; that Order No. 125048, dated October 18, 1976, No. 124768, dated October 6, 1976, and Order No. 124865, dated October 12, 1976, respectively , authorized additional wells in Section 9, T20N, R9W, and Sections 5 and 6, T21N, R7W, said additional wells being necessary to effectively drain the Sections; that Order No. 125542, dated November 4, 1976, extends Order No. 49133, to include Section 24, T20N, R9W; that Order No. 126037, dated November 23, 1976, establishes two 320-acre units;

14. That Orders No. 126541, dated December 14, 1976, No. 128875, dated March 10, 1977, No. 129630, dated April 11, 1977, No. 129636, dated April 11, 1977, No. 129695, dated April 13, 1977, Order No. 130051, dated April 25, 1977, No.

130946, dated May 25, 1977, No. 131119, dated June 2, 1977, No. 131153, dated June 2, 1977, No. 131340, dated June 9, 1977, respectively, authorized additional wells in Section 34, T22N, R7W, Section 1, T21N, R8W, Section 10, T21N, R8W, Section 6, T21N, R7W, Section 11, T21N, R8W, Sections 33 and 34, T21N, R9W, Section 5, T21N, R7W, Section 27, T22N, R8W, Section 36, T22N, R7W, and Section 3, T21N, R7W, all wells being necessary to drain the recoverable hydrocarbons; that Order No. 131859, dated June 27, 1977, excludes Section 22, T22N, R9W, from Order No. 69523 and establishes 80-acre units after a well drilled thereon indicates Section 22 primarily underlain by oil; that Order No. 132361, dated July 14, 1977, extends Order No. 124290 to include SE/4 Section 4, T20N, R9W, as a 160-acre unit; that Orders No. 133155, dated August 4, 1977, No. 133272, dated August 10, 1977, and No. 132199, dated July 6, 1977, respectively authorizes additional wells in Section 30, T22N, R7W, Section 1, T21N, R8W, and Section 5, T21N, R7W, all to effectively drain the Sections involved; that Order No. 133892, dated September 7, 1977, excludes Section 12, T21N, R9W, from Order No. 49133, after a well was drilled thereon which produced predominantly oil and establishes 80-acre units;

15. That Order No. 134192, dated September 21, 1977, excludes Sections 25 and 26, T20N, R9W, from Orders No. 76685 and No. 85435 respectively and establishes 160-acre units therefor; that Orders No. 134466, dated September 29, 1977,

No. 134547, dated October 3, 1977, and No. 134816, dated October 17, 1977, authorizes additional wells, respectively, in Section 10, T22N, R8W, Section 10, T21N, R8W, and Section 11, T21N, R8W, all necessary to maximize recovery from said Sections; that Order No. 136783, dated December 23, 1977, extends Order No. 49133 to include Section 13, T22N, R6W; that Order No. 136620, dated December 16, 1977 excludes Section 23, T20N, R9W, from Order No. 85435, after wells were drilled, and establishes 160-acre units therefor because recoveries indicate that only approximately 160 acres will be drained from one well and that

> "... a change of condition in the knowledge of the area has occurred ... in that it now appears that while said formations may be primarily productive of gas, that large amounts of condensate will be produced and that one well will only drain the recoverable hydrocarbons from under a 160-acre unit";

16. That Order No. 137690, dated February 27, 1978, includes NW/4 Section 11, T21N, R9W, within Order No. 53277 as 80-acre units; that Orders No. 138853, dated March 8, 1978, No. 139023, dated March 14, 1978, No. 139514, dated March 29, 1978, No. 140576, dated May 1, 1978, No. 140746, dated May 8, 1978, No. 142873, dated July 7, 1978, No. 142874, dated July 7, 1978, No. 146125, dated October 2, 1978, and No. 146566, dated November 1, 1978, authorize additional wells respectively, Section 36, T22N, R7W, Section 35, T22N, R7W, Section 3, T21N, R8W, Section 32, T22N, R7W, Section 31, T22N, R7W, Sec-

tion 11, T21N, R8W, Section 11, T21N, R8W, Section 3, T21N, R8W, and Section 32, T22N, R7W, so as to adequately drain the Sections; that Order No. 145467, dated September 28, 1978, excludes Section 26, T21N, R9W, from Order No. 49133 and establishes 80-acre units therefor.

(b) Order No. 50337 and the series of Orders thereunder:

1. That about five (5) months after Order No. 49133, reviewed above, Order No. 50337, dated November 15, 1962, established 640-acre drilling and spacing units for the Mississippian as a gas common source of supply in nine (9) governmental sections; namely Sections 5, 6, 7, 8, 17, and 18, T22N, R7W, and Sections 1, 12 and 13, T22N, R8W; that Order finds:

> "3. . . . that heretofore one well has been drilled within the area . . . and that by the drilling thereof a new and separate common source of supply of oil and gas has been found to exist in the Mississippian Sand . . .
>
> "4. . . . that one well will adequately drain the recoverable gas and gas condensate from said formation underlying 640-acres and that it is unecessary to drill wells on a closer pattern.";

2. That is is now known that the Mississippian is in fact one common source of supply within the combined areas of Order No. 49133, as amended, and Order No. 50337 as amended; that Order No. 52215, dated June 25, 1963, reiterates the provisions of Order No. 50337; that

Order No. 57897, dated March 10, 1965, found that "subsequent development now indicates that said common source of supply extends beyond the area" of Order No. 52215 and included Sections 35 and 36, T23N, R8W; that Order No. 60705, dated November 18, 1965, extended Order No. 52215 to include Sections 1, 2, 3 and 4, T22N, R7W and Sections 35 and 36, T23N, R7W; that Order No. 61728, dated February 22, 1966, extended Order No. 52215 to include Sections 27, 28, 33 and 34, T23N, R8W; that Order No. 62287, dated April 15, 1966, extended Order No. 50337, to include Section 10, T22N, R7W; that Order No. 63750, dated September 23, 1966, extended Order No. 50337 to include Sections 31, 32 and 33, T23N, R7W; that Order No. 63767, dated September 23, 1966, extended Order No. 52215 to include Section 9, T22N, R7W; that Order No. 64129, dated November 1, 1966, deleted Section 36, T23N, R7W, from the purview of Order No. 50337 and established 80-acre drilling and spacing units for the Mississippi Lime underlying said Section 36 after a well had been drilled in the NE/4 SE/4 of said Section 36 and revealed Section 36 to be "underlain by oil"; that Order No. 64719 dated January 6, 1967, extended Order No. 50337 to include Section 27, T23N, R7W;

3. That by Order No. 64959, dated February 7, 1967, Field Rules regulating the production of gas from the Mississippi Lime throughout the areas covered by Order No. 49133, as amended, by Order No. 50337, as amended, by Order No. 53277, as amended, by Order No. 56922, as

amended and by Order No. 58120, as amended, (four series of Mississippian Orders) and in said Order No. 64959 field rules were found to be necessary to provide "an equal opportunity" for owners of interests in the various areas covered by said Order, "to recover their producible gas" and to "accomplish all lawful and desirable results in the matter of allocating gas to the individual wells throughout the extent and life of *the common source of supply.*"

4. That subsequent to Order No. 64959, Order No. 65583, dated April 14, 1967, extended Order No. 50337 to include Section 34, T23N, R7W; that Order No. 65721, dated April 25, 1967, deleted Section 1, T22N, R7W from the purview of Order No. 50337, established 80-acre units for the Mississipian in said Section 1, after finding that the "development and trend of development now indicates" that the Mississippian Formation "will be predominantly productive of oil and gas"; that Order No. 68261, dated February 27, 1968, deleted Section 2, T22N, R7W, from the purview of Order No. 50337, established 80-acre units for the Mississippi Lime in said Section 2 after finding that "Section 2 is predominantly underlain by oil"; that Order No. 69812 deleted Section 22, T23N, R7W, from the purview of Order No. 64719 which had established 80-acre oil and gas units in said Section 22 and brought said Section 22 within the purview of Order No. 64719 as a 640-acre unit because the gas-oil ratio of a well in said Section 22 had increased to in excess of "25,000 cubic feet per barrel of oil"; that Order No. 80926, dated June 30, 1970, extended Order

No. 52215 to include Sections 19, 20, 21, 28, 29, and 30, T23N, R7W, and Sections 23 thru 26, T23N, R8W, finding "that one well will adequately and efficiently drain.... all of the gas and gas condensate underlying a 640-acre tract of land"; that Order No. 114625, dated August 6, 1975 vacated the Field Rules Order, referred to above as Order No. 64959, finding that there were 101 wells then producing and that the Field Rules were no longer applicable; that Order No. 138728, dated March 2, 1978, extended Order No. 50337 to include Sections 31 and 32, T23N, R8W.

5. That the review of Order No. 49133 and the amended Order thereto and of Order No. 50337 and the amending Order thereto show

i. that, when Order No. 49133, where only two wells had been drilled within the area covered by Order No. 49133 when it was issued, and when Order No. 50337, where only one well had been drilled within the area covered by Order No. 50337 was issued, the 640-acre drilling and spacing units were first established because the Mississippian was indicated to be gas and gas condensate common sources of supply within the respective areas and it was then concluded that one well could be expected effectively and efficiently to drain the recoverable gas and gas condensate from 640 acres;

ii. that, while those initial Orders apparently treated their respective areas as separate from each other, the areas covered by said Orders, as amended, are in fact in the Mississippian, a common source of supply;

iii. that, at the time of the issuance of Orders No. 19133, and No. 50337, it could not then reasonably be foreseen that both oil and gas would be found in the areas, and that the numerous exceptions, which have been granted, to well density and to drilling and spacing unit size would be necessary to prevent waste and protect correlative rights;

iv. that there has been substantial change of conditions and knowledge of conditions in the Mississippian as to the hydrocarbon saturation, i.e., whether oil, gas, or condensate will be found, the effective drainage radius of a well, the nature and characteristics of the Mississippian, and of those features thereof such as porosity, permeability, water saturation, hydrocarbon saturation, effective pay thickness, and lithology;

v. that there has been a substantial change in the orderly development of the areas, which was contemplated by the issuance of Orders No. 49133 and No. 50337 to be only one (1) well per 640-acre unit, by the necessary granting of numerous exceptions to well density and drilling and spacing unit size;

vi. that the conditions and knowledge of conditions now prevalent with respect to the development of the Mississippian heretofore and with respect to the production of wells already drilled within the area covered by the Application area, in conjunction with the drilling and production of wells which will be required in the future clearly demon-

strate that a more orderly administration of the area, other than that which has occurred on a 640-unit basis, is necessary to assure that those wells reasonably required to prevent waste and protect correlative rights can or will be drilled.

(c) The Evidence:

1. Applicants' Exhibits:

Exhibit No. 30 — is a plat which shows, colored in red, the area covered by this Application herein; Sections 26 and 35, T22N, R8W are shown as not covered by said Application because three wells have already been drilled in each Section; the area covered by Order No. 49133, as amended, is outlined in a blue-red line and the area covered by Order No. 50337 and 52215, both as amended, is outlined in green-red line; all order numbers of orders amending the basic Order No. 49133 and 50337 are also shown.

Exhibit No. 31 — is a plat which shows, with respect to the area covered by Order No. 49133, as amended, and Order No. 50337, as amended, order numbers and exceptions to the basic 640-acre drilling and spacing units; some of said exception orders, as shown, vacate 640-acre units and establish 80-acre, 160-acre or 320-acre units; other of such orders authorize additional wells on 640-acre units or other sized units.

Exhibit No. 32 — is a plat which shows various drilling and spacing units as authorized

in the area covered by said Exhibit and the order numbers therefor.

Exhibit No. 33 — is a plat which shows the area, colored in blue, covered by the Application herein and all wells which produced or are producing from the Mississippian in said area; the data, where available, which is shown opposite each well symbol includes:

(1) Completion Date-Month-Year/Total Depth
(2) Perforations: Number (highest-lowest)
(3) Initial Potential: gas MMCFD/Oil BPD flowing pressure PSIG (OFP indicates gas and oil (condensate) are calculated openflow potential values)
(4) Accumulated production: 1-1-78 — Gas in BCF/Oil in MBBLS
(5) Average producing rate last six (6) months of 1977; Gas MMCF per month/ oil BBLS per month
(6) Mississippi (Meramec-Osage) interval: Gross feet/net feet
(7) Average log porosity: percent (%);

that, on cross examination, the wells where there was no production data presented were marked with a red "zero" and those wells where there was no log data presented were marked with a red check; that all of the wells produce or have produced varying quantities of gas along with varying quantities of liquid hydrocarbons (oil or condensate) with the southern tiers of wells, in general, ranging more to oil with gas produc-

tion and the wells to the north from said southern wells, in general, ranging more to gas with oil or condensate production; that the Exhibit demonstrates the variability in the producing characteristics of the wells reflecting the variability in the inherent characteristics of the Mississippian and the low porosity thereof which appears from the Exhibit to have a median value of approximately six (6%) percent; that in connection with Exhibit No. 33, the witness testified that there are substantial quantities of gas and liquid hydrocarbons (oil and condensate) in place under the Application area, that said gas and liquid hydrocarbons (oil and condensate) are not being recovered by and will not be recovered by the existing wells and that more wells must be drilled in the area to effect maximum and optimum recovery from the Mississippian; that with respect to each and every Section in the Application area, where electric logs were available, volumetric reserves in place were determined and the results thereof were checked against the pressure vs. cumulative production history of the individual wells; that Exhibit No. 33 shows that more than one well has been drilled in the following:

Section	Wells	Producing Status
Section 32, T23N, R7W	2	1
Section 35, T23N, R8W	2	1
Section 4, T22N, R7W	2	1
Section 10, T22N, R8W	2	1
Section 11, T22N, R9W	2	1

Section 21, T22N, R8W	2	1
Section 30, T22N, R7W	2	2
Section 27, T22N, R8W	2	2
Section 34, T22N, R7W	2	2
Section 33, T22N, R7W	2	2
Section 32, T22N, R7W	2	2
Section 36, T22N, R9W	2	2
Section 35, T22N, R9W	2	2
Section 9, T21N, R8W	2	2

Exhibit No. 35— is a late filed Exhibit having reference to Exhibit No. 33 tabulating the data which was not available in the preparation of that Exhibit.

Exhibit No. 36 is the same plat as Exhibit No. 33 on which there is superimposed, in red, the results of a computer-confirmed study having as its purpose the determination of the effective drainage of each well. The plat is referred to as an Iso-drainage Map with the red lines representing lines of equal area drainage. The Exhibit shows that the maximum drainage of any well on the Exhibit is no more than 226 acres as shown by the Union Texas Petroleum-Rhodes-State Well in the NE/4 SW/4 Section 13, T22N, R8W; no well on the Exhibit is shown as draining 640 acres and the Exhibit shows that no well can ever be expected to drain 640 acres even in the area north of the southern tiers of Sections where the wells range more to gas with oil or condensate production. This Exhibit must be considered in, and in connection with, Exhibit No. 37, No. 40, No. 57, and Exhibit No. 73. Exhibit No. 57 was presented by

the protestants and shows that the area of maximum gross cumulative production centers on the Union Texas Petroleum-Rhodes-State well in Section 13, T22N, R8W, before mentioned. Said Exhibit No. 57 is confirmatory of Exhibits No. 33 and No. 73. During the hearing it was pointed out as shown by Exhibits No. 33, and No. 40, that certain information was not available in the preparation of Exhibit No. 33. During a recess in the hearing additional electric logs were made available to Applicants and the Isodrainage map, Exhibit No. 73, was prepared and shows more comprehensively the drainage areas of wells.

Exhibit No. 37 is a series of computer printouts showing, with respect to certain wells, calculations involving a determination of the drainage areas of the wells shown.

Exhibit No. 38 is an analysis, from the normal 1/8th royalty owner's view point, of a typical new well, reserves and economics, which produces ultimately 19,708 barrels of oil and 3165.709 MMCF of gas. Said new well would pay such owner $856,431 with a present net worth, discounted at 10%, of $671,825.

Exhibit No. 39 — page one (1) of the Exhibit is an analysis, from the normal 1/8th royalty owner's viewpoint, assuming 144 new wells drilled on an increased density basis (not a 160-acre unit basis) in the Application area with twelve (12) of such wells drilled during the first year, 24 wells drilled in the second year and 36 wells in each of the next three (3)

years and with the total wells ultimately producing 2,825,712 barrels of oil and approximately 453,952.992 MMCF of gas. Said new wells would pay such owners' $99,231,208, with a present net worth, discounted at 10%, of $60,903,468.

Page two (2) of the Exhibit is an analysis, from the normal 1 / 8th royalty owner's viewpoint, assuming 208 new wells drilled in the area covered by the Application with 104 wells drilled during the first year and 104 wells drilled during the second year and with the total wells ultimately producing 4,067,408 barrels of oil and approximately 656,604.032 MMCF of gas. Said new wells would pay such owners $184,469,312, with a present net worth discounted at 10%, of $136,976,848.

Exhibit No. 40 — porosity is an important ingredient in determining oil or gas in place and the drainage area of a well. This Exhibit is a small copy of Exhibit No. 36; on Exhibit No. 40, in green, are wells on which, at time of preparation of Exhibit No. 36 no electric logs, and thus no porosity-data, were available. This Exhibit No. 40 must be reviewed in connection with Exhibit No. 73 which was prepared after certain owners in the area furnished Applicants with some of the electric logs not available when Exhibit 36 was prepared.

Exhibit No. 41 — is the same as Exhibit No. 33 on which there has been superimposed, in red, a line of an east-west (Exhibit No. 42)

electric log cross-section of the Mississippian and, in green, a line of a north-south (Exhibit No. 43, below) electric log cross-section of the Mississippian; that the east-west green line on the Exhibit was drawn, in cross examination, by the witness as a line south of which, in general, the wells range more to oil with gas production and to the north of which the wells range more to gas with oil or condensate production.

Exhibit No. 42 — is an electric log cross-section of the Mississippian (red line A-A' on Exhibit No. 41) which shows that the Mississippian is a continuous common source of supply, in an east-west direction, throughout the area covered by the Application as does the well distribution and density shown on Exhibit No. 36; the thickness of the Mississippian is shown between the top and base lines. The abnormally thick Mississippian in the Shell Oil Company B. J. Rhodes No. 118 well in Section 18, T22N, R7W is an uncorrected interval in a deviated well.

Exhibit No. 43 — is an electric log cross-section of the Mississippian (Green line B-B on Exhibit No. 41) which shows that the Mississippian is a continuous source of supply in a north-south direction throughout the area covered by the Application. The abnormally thick Mississippian in the Shell Oil Company deviated well is also shown.

Exhibit No. 73 — is a plat up-dating the drainage areas of wells based on electric logs and information furnished during a recess in the

hearing; this Exhibit is considered and referred to under Exhibit No. 36 above.

The foregoing Exhibits were presented on behalf of Applicants through four witnesses all of whom are petroleum engineers with extensive engineering, geological, production and oil economics experience. In addition to such Exhibit, all oral or written statements of those witnesses have been considered.

2. Protestants' Exhibits:

Exhibits No. 44 and 45 — are copies of oil and gas leases, Exhibit No. 44 being a form only, showing W. T. Massey and Joseph Kent Massey dba Massey & Massey as Lessee which leases, admittedly, are representative of numerous oil and gas leases held by such parties, as Lessee, in the area covered by the Application; that leases of the kind shown have been taken from mineral owners in the Area some of whom heretofore have executed oil and gas leases to the protestants herein with the protestants' leases now being held by production from wells drilled on 640-acre drilling and spacing units;

Exhibit No. 47 — is a typewritten report of a meeting held in Enid, Oklahoma, whereat the substance of the Application heard in this Cause was discussed with interested owners. The Exhibit was prepared by an Attorney at Law attending the meeting at the request of some of the protestants. In substance, the Exhibit shows that the legal and

equitable problems which attend the Application were discussed.

Exhibit No. 48—is a plat sponsored by Union Texas Petroleum which shows the 640-acre drilling and spacing unit area covered by Order No. 50337, as amended, as well as the 640-acre unit area covered by Order No. 49133, as amended, both showing deletion areas and Sections with additional wells permitted. This Exhibit shows, in a different way, the same information shown on Applicants' Exhibits No. 30, No. 31, and No. 33; there are no substantial or material variations with respect to the information shown on the Exhibits;

Exhibit No. 49—is a plat sponsored by Union Texas Petroleum showing the outline of the area covered by the Application and the Mississippian wells within such area; the Exhibit is comparable to Applicants' Exhibit No. 33 but no detailed well information is shown; Exhibit No. 49 shows the areas, hatched in blue lines, covered by Union Texas Petroleum's oil and gas leases all of which are being held by production by wells producing in the 640-acre units; additionally, with respect to certain wells, cumulative production data is shown which confirms Applicants' evidence that the southern tiers of wells in the Application area, in general, range more to oil with gas production and the wells to the north, in general, range more to gas with oil or condensate production.

Exhibit No. 50 — consists of separate pages of a petition signed by thirty seven (37) owners of normal 1/8th royalty interest and working interest protesting the granting of the Application; during the hearing twenty three (23) of the above withdrew their names from the petition and supported the Application;

Exhibit No. 51 — is a plat, comparable to Exhibit No. 49, by Union Texas Petroleum showing, in yellow, the oil and gas leases which Union Texas Petroleum represents will continue to be held by production if the Application herein is granted and, in green, the oil and gas leases which Union Texas Petroleum represents would be lost to it if the Application herein is granted; that during the hearing it was noted that Union Texas Petroleum has filed, pursuant to the terms and provisions of its oil and gas leases, voluntary pooling agreements with respect to some of its leases but the net effect of those agreements, if any, was not shown;

Exhibits No. 52, No. 53 and No. 54 — sponsored by Union Texas Petroleum relate to the Courter No. 1 Well in the NE/4 SW/4 Section 21, T22N, R8W which was plugged and abandoned because of mechanical difficulties; Exhibit No. 54, estimates that said well, when plugged and abandoned, had attributable, at an abandonment pressure of 150 PSIG, to it remaining reserves of 11,530 barrels of oil and 1270.279 MMCF of gas. A replacement well was drilled on the same

section and it is estimated, at abandonment pressure of 150 PSIG, to have an ultimate recovery of 8193 barrels of oil and 1205.346 MMCF of gas;

Exhibit No. 56 — is a plat, sponsored by Champlin Petroleum Company, which shows the area, outlined in red, covered by the Application and the general area of Champlin Petroleum Company operations; in addition, the Exhibit is a structural map showing the southwestern dip of the Mississippian and showing other areas wherein Champlin Petroleum has an interest; thereon, in blue and red dots, are twenty-seven (27) wells in which Champlin has an interest and which have been or will be completed in 1978;

Exhibit No. 57 — is a plat, sponsored by Champlin Petroleum Company, showing gross cumulative production as of January 1, 1978, in the area covered by the Application herein and in other contiguous areas; this Exhibit confirms other Exhibits herein and shows that, generally, within the Application area the wells with the highest gross cumulative production coincide with the areas of best drainage as shown on Applicants' Exhibit No. 36 and the wells with lower gross cumulative production generally coincide with the areas of poorest drainage as shown on said Exhibit No. 36;

Exhibit Nc. 58 — is a plat showing, in yellow, Champlin Petroleum Company oil and gas leases in the Application area with that Com-

pany currently participating in 31 producing units;

Exhibit No. 59 — is a plat showing, in yellow, thirty-three (33) 640-acre units in which Champlin Petroleum Company has an interest;

Exhibit No. 60 — is a plat showing, in yellow, those 160-acre tracts within 640-acre units on which Champlin Petroleum Company interest wells have been drilled and are producing; the areas in blue represent the 160-acre tracts, within 640-acre units, on which there are no producing wells in the Mississippian;

Exhibit No. 61 — is a plat showing the outline of the area within which wells have cumulative gas/oil ratios greater than 75,000 cubic feet per barrel of oil; this Exhibit confirms the evidence of Applicants and other witnesses who expressed the view that the southern tiers of sections in the Application area range more to oil with gas production while the sections to the north range more to gas with oil or condensate production;

Exhibit No. 62 is a graph which shows the pressure decline profile of four (4) selected wells; i.e., Section 7, T22N, R8W
Section 8, T22N, R8W
Section 17, T22N, R8W
Section 18, T22N, R8W
with respect to time; the wells respectively, as shown on Exhibit No. 61, have cumulative gas/oil ratios of 197MG/1BO, 160MF/1BO, 133MG/1BO and 140MG/1BO;

Exhibit No. 63—is a graph which shows the pressure decline profile of four (4) selected wells; i.e., Section 21, T22N, R8W
Section 22, T22N, R8W
Section 23, T22N, R8W
Section 24, T22N, R8W
with respect to time; the wells respectively, as shown on Exhibit No. 61, have cumulative gas/oil ratios of 110MG/1BO, 92MG/1BO, 85MG/1BO, and 67MG/1BO;

Exhibits No. 64, No. 64-A and No. 65 — were presented to show the economic impact, in protestants' viewpoint, based upon a two case analysis: Case A which assumes ultimately recoverable reserves of 5 billion cubic feet of gas per 640-acre unit with 4 billion cubic feet of gas having already been produced and Case B — assuming ultimate recoverable reserves of five billion cubic feet of gas per 160-acre tract with 4 billion cubic feet of gas having been produced. The net conclusion reached on the assumptions made is that, if 160-acre units are established there will be an adverse economic impact upon the owners of working interest and upon the owners of the normal 1 / 8th royalty interest and particularly those royalty owners who have a well on their land and who have been sharing the royalty production with others in the 640-acre unit.

Exhibit No. 66 — is a plat of Harper Oil Company which shows the Application area outlined in black and the wells of that company, both in and out of that area, which are addi-

tional wells drilled on 640-acre units since 1972; the plat further shows Sections 26 and 35, T22N, R8W, which are not included in the Application area, because Harper Oil Company has drilled three wells on each Section but even after approximately 15 years that Company has not drilled all of the wells in Section 26 which that Company represented to this Commission were necessary to drain all of the recoverable oil and gas therefrom;

Exhibit No. 67 — is a plat showing additional wells spudded in the year 1978 both in and out of the Application area by Harper Oil Company; the wells are shown in orange color; only three (3) of the ten (10) wells shown fall in the Application area.

Exhibit No. 68 — is a plat showing the general Sooner Trend area, including the Application area served by Oklahoma Natural Gas Company as a purchaser; that said company objected to the Application, in part, because of the npact the granting thereof might have upon its natural gas customers.

Exhibits No. 69 and 70 — are graphs presented by Atlantic Richfield Company of 160-acre density oil wells increased to 80 acres in the Sooner Trend, the first of which shows the results from development upon oil production in barrels of oil per day of its drilling program of 30 wells started in 1963 and the additions to that daily oil producing rate by its 32 well drilling program started in 1974; Exhibit 70 postulates what that daily production might have been had the bottom hole

pressure in the areas of the 1974 drilling program not already been partly reduced by the wells drilled and produced in the 1963 program:

Exhibit No. 71 — is a copy of the opinion in *California et al* vs. *Southland Royalty Company* et al, No. 76114, Certiorari to the United States Court of Appeals for the Fifth Circuit, decided May 31, 1978;

Exhibit No. 72 — is an economic study of Section 33, T22N, R7W assuming the establishing of 160-acre units after the first well was completed in the Section but before the second well was completed therein; the Exhibit assumes, if the 640-acre units remain in effect for an oil well that each quarter section will be paid $67,000 actual royalty; i.e. each quarter section will share equally; but if the 160-acre units had been established before the Moravek No. 2 Well is drilled and no additional wells are drilled, that the SE/4 and NW/4 Section 33 each will get $27,300 royalty; that SW/4 Section 33 will get $64,100 royalty and overriding royalty;

The foregoing Exhibits were presented on behalf of the protestants through several witnesses among whom were a lawyer, computer expert-engineer, land person and petroleum engineers with extensive engineering, geological, production and oil economics experience. In addition to the Exhibits, all oral or written statements of the witnesses have been considered.

(d) Commission conclusions:

i. That, in general, the evidence of the Applicants and of the Protestants is comparable when viewed from the standpoint as to the conditions and knowledge of conditions in the Mississippian when Orders No. 49133 and No. 50337 were issued and when viewed from the standpoint of the now known conditions and knowledge of conditions therein; that, despite reasonably comparable knowledge derived from historical and present development and operations, Applicants and protestants differ as to what is the most reasonable and equitable basis for the future orderly further development of the Mississippian; that protestants, who have been granted numerous exceptions to Orders No. 49133, as amended, and to No. 50337, as amended, by way of well density and varying drilling unit size upon allegations and proof that there has been a change in conditions or a change in knowledge of conditions in the Mississippian, now contend that there has been no change of conditions or knowledge of conditions with respect to the 640-acre units, in the area of the Application since they were first established;

ii. that protestants urge that the appropriate statutory remedy herein is to further develop the area on an increased well density basis, pursuant to applications to be filed either with respect to each drilling and spacing when an owner in a unit shall have determined, that such application should be filed or otherwise; that the interest of the Commission in the prevention of waste and in the protection of cor-

relative rights and the duty and responsibility of the Commission to prevent waste and protect correlative rights require that the Commission not act in derogation of its interest, duty and responsibility by such an indirect delegation of its duty and responsibility to any owner whose subjective interests may be in conflict with the ends of waste prevention or correlative rights protection;

iii. that there is substantial evidence to show that there has been and that there is a change in conditions and a change in knowledge of conditions in that it is now known, from the historical development and production in the Application area that the Mississippian is far less conducive to being effectively and efficiently drained by one (1) well to each 640-acre unit than was supposed and contemplated when Order No. 49133 and Order No. 50337 were first issued, both in 1962; that the porosity and the drainage of wells in the Mississippian are much less effective and efficient than earlier anticipated; that even though reservoir pressure depletion occurs with wells now producing on the 640-acre unit basis such pressure depletion is not and will not cause the Mississippian, on a 640-acre unit basis, to be effectively and efficiently drained thus resulting in the unnecessary depletion or inefficient utilization of the gas energy contained in the common source of supply so that substantial quantities of ultimately economically recoverable oil, gas, and condensate are not being and will not be recovered by the continued development and production of the Mississippian on a

640-acre unit basis; nor can correlative rights be best protected by a continuation of such 640-acre units; that in the said Mississippian within the Application area it is now reasonably required that 160-acre drilling and spacing units be established; that the well on each 160-acre unit is necessary to effectively and efficiently drain a portion of the reservoir covered by the unit, which portion of the reservoir cannot be effectively and efficiently drained by any existing well within the 640-acre unit;

iv. that, it has been stipulated as set out in the Preliminary Order herein, that the entire Application area is underlain by the Mississippian and that the Mississippian is a combination reservoir or reservoirs;

v. that, the gas-oil ratio and cumulative gas production evidence herein shows that substantial quantities of gas will be produced in the south tiers of wells where the witnesses concur that the wells run to oil and gas production and will be produced in the North wells where all concur that the wells range more to gas and it appears that such characteristics necessitate that all units in the area be 160-acre;

vi. that, to prevent or to assist in preventing waste and to protect or assist in protecting correlative rights of all interested parties, an Order should be issued vacating Order No. 49133, as amended, and Order No. 50337, as amended, as to the Mississippian, the top of which is encountered in the area at depths ranging from about 6300 feet to 6700 feet below the surface, and as to the 640-acre drilling and

spacing units established by such Orders, as amended, with respect to the following lands in Major and Garfield Counties, Oklahoma: Sections 2, 5, 6, and 9, T21N, R8W, Sections 11 thru 14, 23 thru 26, 35 and 36, T22N, R9W; Sections 30, 31, 32, and 34, T23N, R7W; Sections 31 thru 36, T23N, R8W; Sections 1 thru 25, 27 thru 34, and Section 36, T22N, R8W; Sections 3 thru 25 and 27 thru 31, 33 and 34, T22N, R7W; and said Order No. 49133, as amended, should again be amended to include within the purview thereof all of the lands just described and 160-acre drilling and spacing should be established with respect to such lands and each unit should be a quarter governmental section with the permitted well on each unit to be drilled on the unit not closer than 660 feet to the unit boundary thereof and well location exceptions should be granted for any well heretofore drilled to and producing from the Mississippian as to any unit so established; that the Application should not be granted as to Section 7 and 8, T21N, R8W, Section 33, T23N, R7W; the Application was dismissed as to said Sections 8 and 33 and said dismissal should be granted; the Application should not be granted as to Section 32, T22N, R7W, on which there are already four (4) wells; that Sections 25 and 36, T22N, R8W each have three wells thereon and it was proper not to have included said Sections with this Application;

vii. that, the Commission has been administering the development and production in the Mississippian in the areas covered by Order No. 49133, as amended, and Order No. 50337, as

amended, by increasing or enlarging the size of the drilling and spacing units both before and after wells have been drilled and producing on such units and has authorized increased density wells depending upon the relief which the Commission, in those instances concluded to be proper and in this instance the Commission concludes that the establishing of 160-acre units is the proper relief, even though other relief may be available, based on the substantial evidence herein;

viii. that, all of the contentions of protestants have been duly considered but after reviewing all of the evidence and the law applicable thereto the Commission finds that it is necessary, under the evidence herein and for the purposes of the prevention of waste and the protection of correlative rights, that the Commission, authorize, provide for and establish the 160-acre drilling and spacing units requested by Applicants to the ends that a greater ultimate recovery of oil, gas, and condensate be had from the Mississippian, waste be prevented and the correlative rights of the owners of oil and gas interests therein be, to a fuller extent, beneficially enjoyed and protected.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That the 640-acre drilling and spacing units heretofore established, respectively, by Order No. 49133, as amended, and by Order No. 50337, as amended, as to the

lands next described be and the same hereby are vacated, set aside, and held for naught with respect to said lands as follows:

Sections 2, 5, 6 and 9, T21N, R8W, Sections 11 thru 14, 23 thru 26, 35 and 36, T22N, R9W; Section 30, 31, 32, and 34, T23N, R7W; Sections 31 thru 36, T23N, R8W; Sections 1 thru 25, 27 thru 34, and Section 36, T22N, R8W; Sections 3 thru 25 and 27 thru 31, 33 and 34, T22N, R7W.

2. That drilling and spacing units be and the same are hereby established as follows:

Common Sources of Supply	Classification	Drilling and Spacing Unit Size
Mississippian	Combination reservoir	160 acres

underlying Sections 2, 5, 6, and 9, T21N, R8W; Sections 11 thru 14, 23 thru 26, 35 and 36, T22N, R9W; Sections 30, 31, 32, and 34, T23N, R7W; Sections 31 thru 36, T23N, R8W; Sections 1 thru 25, 27 thru 34, and Section 36, T22N, R8W; Sections 3 thru 25 and 27 thru 31, 33 and 34, T22N, R7W, by amending Order No. 49133, as amended, to include said lands.

3. That drilling and spacing units shall be quarter governmental sections.

4. That each well hereafter drilled to said common sources of supply on each drilling and spacing unit established hereby must be drilled on the unit but not closer than 660 feet to the boundary thereof; provided that each well heretofore drilled and producing on any quarter governmental section not on the pattern prescribed is granted an exception and shall be the well for the unit on which same is situated.

5. That all royalty interests within each drilling and spacing unit are pooled and unitized and each royalty owner shall share in the one-eighth (1 / 8) of all production from any well thereon in the proportion that the acreage owned by each such royalty owner bears to the entire acreage in the drilling and spacing unit.

6. That when there are two (2) or more separately owned tracts or undivided interests separately owned within any drilling and spacing unit established hereby, the owners thereof may validly pool their interests and develop the drilling and spacing unit as a unit; that where, however, such owners have not agreed to so pool their interests and to develop the drilling and spacing unit as a unit, their rights and equities shall be pooled and adjudicated as provided in subsection e, Section 87.1, Title 52, O.S.

7. That no more than one (1) well shall hereafter be produced from the common sources of supply named above on any drilling and spacing unit established hereby and the permitted well on any drilling and spacing unit established hereby shall be drilled only at the location thereon as prescribed above, unless the Commission, prior to the drilling of said well, shall have authorized a well location exception therefor in accordance with subsection d, Section 87.1, Title 52, O.S.

8. That attached, and a part hereof as Exhibit "A," is a plat of the drilling and spacing units established by this Order and the permitted well therefor.

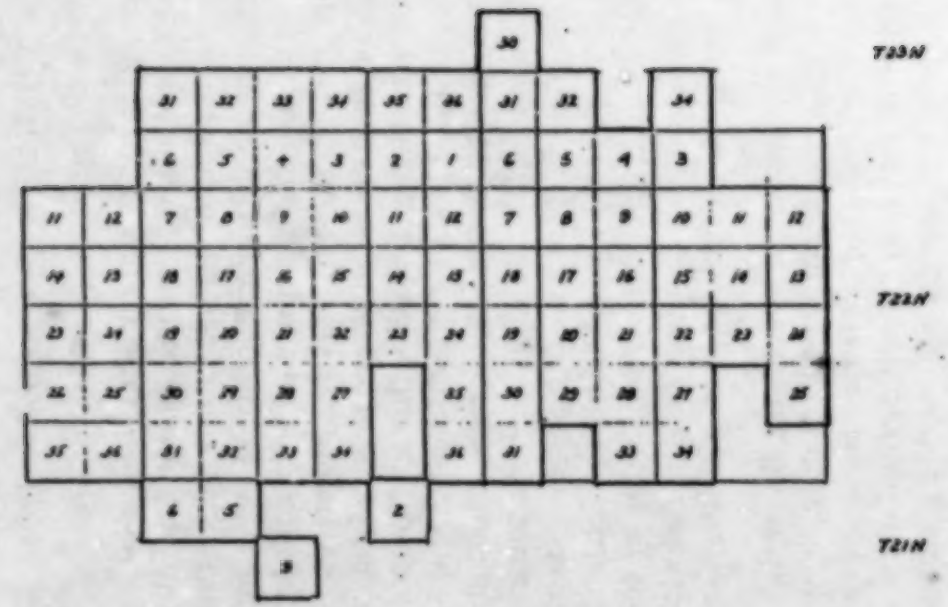
9. That this Order shall be effective as of the 1st day of January, 1979.

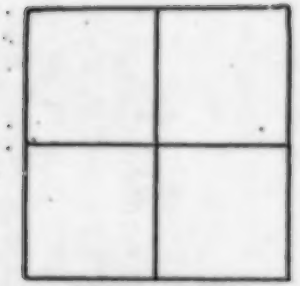
DONE AND PERFORMED this 3rd day of January, 1979.

CORPORATION COMMISSION OF OKLAHOMA

Hamp Baker, Vice Chairman
Jan Eric Cartwright,
Commissioner

(Seal)
ATTEST:
Ed Overholser, Secretary





CAUSE CD NO. 54890

EXHIBIT "A"

Unit Size: 160 acres (Governmental quarter-section)

Well Location: Not closer than 66 feet to unit boundary.

Common Source of Supply: Mississippian

52 OKLA. STAT. (1978), § 87.1—CONSERVATION OF OIL AND GAS

§ 87.1. Common source of supply of oil-well spacing and drilling units.—Whenever the production from any common source of supply of oil or natural gas in this state can be obtained only under conditions constituting waste or drainage not compensated by counter-drainage, then any person having the right to drill into and produce from such common source of supply may, except as otherwise authorized or in this section provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma; provided, that the Commission may authorize the drilling of an additional well or wells on any spacing and drill-

ing unit or units or any portion or portions thereof or may establish, reestablish, or reform well spacing and drilling units of different sizes and shapes when the Commission determines that a common source of supply contains predominantly oil underlying an area or areas and contains predominantly gas underlying a different area or areas; provided further that the units in the predominantly oil area or areas shall be of approximately uniform size and shape, and the units in the predominantly gas area or areas shall be of approximately uniform size and shape, except that the units in the gas area or areas may be of nonuniform size and shape when they adjoin the units in the oil area or areas; provided further that the drilling pattern for such nonuniform units need not be uniform, and provided further that the Commission shall adjust the allowable production within said common source of supply, or any part thereof, and take such other action as may be necessary to protect the rights of interested parties. Any order issued pursuant to the provisions hereof may be entered after a hearing upon the petition of any person owning an interest in the minerals in lands embraced within such common source of supply, or the right to drill a well for oil or gas on the lands embraced within such common source of supply, or on the petition of the Conservation Officer of the State of Oklahoma. When such a petition is filed with the Commission, the Commission shall give at least fifteen (15) days' notice of the hearing to be held upon such petition by one publication, at least fifteen (15) days prior to said hearing, in some newspaper of general circulation printed in Oklahoma City, Oklahoma, and by one publication, at least fifteen (15) days prior to the date of said hearing, in some newspaper printed in the county, or in each county, if there be more than one, in which

the lands embraced within the application are situated. Except as to the notice of hearing on such a petition, the procedural requirements of Sections 84 to 135, inclusive, of Title 52, Oklahoma Statutes, shall govern all proceedings and hearing provided for by this section.

(b) In case of a spacing unit of one hundred sixty (160) acres or more, no oil and/or gas leasehold interest outside the spacing unit involved may be held by production from the spacing unit more than ninety (90) days beyond expiration of the primary term of the lease.

(c) In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage to be embraced within each unit not to exceed a maximum of six hundred forty (640) acres for a gas well plus ten percent (10%) tolerance, except fractional sections along the state boundary line may be spaced with adjoining section unit, and the shape thereof shall be determined by the Commission from the evidence introduced at the hearing, and the following facts, among other things, shall be material:

(1) The lands embraced in the actual or prospective common source of supply; (2) the plan of well spacing then being employed or contemplated in said source of supply; (3) the depth at which production from said common source of supply has been or is expected to be found; (4) the nature and character of the producing or prospective producing formation or formations; (5) any other available geological or scientific data pertaining to said actual or prospective source of supply which may be probative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and relative allowance for the cor-

relative rights and obligations of the producers and royalty owners interested therein.

The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area, which shall be uniform except as hereinbefore provided; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information. Subject to other provisions of this act, the order establishing such spacing or drilling units shall direct that no more than one well shall thereafter be produced from the common source of supply on any unit so established, and that the well permitted on that unit shall be drilled at the location thereon as prescribed by the Commission, with such exception as may be reasonably necessary where it is shown, upon application, notice and hearing in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, and the Commission finds that any such spacing unit is located on the edge of a pool and adjacent to a producing unit, or for some other reason that to require the drilling of a well at the prescribed location on such spacing unit would be inequitable or unreasonable. Whenever such an exception is granted, the Commission shall adjust the allowable production for said spacing unit and take such other action as may be necessary to protect the rights of interested parties.

(d) The Commission shall have jurisdiction upon the filing of a proper application therefor, and upon notice given as provided in subsection (a) above, to decrease the size of the well spacing units or to permit additional

wells to be drilled within the established units, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of wastes prohibited by statute, or any of said wastes, or will protect or assist in protecting the correlative rights of persons interested in said common source of supply, or upon the filing of a proper application therefor to enlarge the area covered by the spacing order, if such proof discloses that the development or the trend of development indicates that such common source of supply underlies an area not covered by the spacing order and such proof discloses that the applicant is an owner within the area covered by the application. The Commission shall not establish well spacing units of more than forty (40) acres in size covering common sources of supply of oil, the top of which lies less than 4,000 feet below the surface as determined by the original or discovery well in said common source of supply. The Commission shall not establish well spacing units of more than eighty (80) acres in size covering common sources of supply of oil the top of which lies less than 9,990 feet and more than 4,000 feet below the surface as determined by the original or discovery well in said common source of supply.

(e) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the

drilling of such well is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the

proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners therein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this section, the owner, or owners, of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths (⅞) interest in and to said rights and a lessor to the extent of the remaining one-eighth (⅛) interest therein. Should the owners of separate tracts or interests embraced within a spacing unit fail to agree upon a pooling of their interests and the drilling

of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then, subject to all other applicable provisions of this act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit.

In the event a producing well, or wells, are completed upon a unit where there are, or may thereafter be, two or more separately owned tracts, any royalty owner or group of royalty owners holding the royalty interest under a separately owned tract included in such spacing unit shall share in the one-eighth (⅛) of all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, in the proportion that the acreage of their separately owned tract or interest bears to the entire acreage of the unit; provided, where a lease covering any such separately owned tract or interest included within a spacing unit stipulates a royalty in excess of one-eighth (⅛) of the production, or said lease shall be subject to an overriding royalty, to production payment or other obligation, then the lessee of said lease out of his share of the working interests from the well drilled on said unit shall sustain and pay said excess royalty, overriding royalty, or production payment, and therefrom meet any other obligation due in respect to the separately owned tract or interest held by him.

Amended by Laws 1977, c. 76, § 1, emerg. eff. May 25, 1977.

Construction and application

Oil and gas conservation statutes require that evidence show that area for which drilling and spacing units are established must be underlain by common source of supply; State Corporation Commission has no authority to include known nonproductive area in drilling and spacing unit. ***Caudillo v. Corporation Commission, Okl., 551 P.2d 1110 (1976).***

Hladik v. Lee, Okl., 541 P.2d 196 (1975).

Previous spacing order establishing formation underlying section as a common source of supply, together with evidence that applicant held oil and gas leases covering the north 480 acres of section, established jurisdiction of the Corporation Commission to enter order authorizing applicant to drill a well within the south 160 acres of the section, despite contention that applicant had no interest in the minerals in such portion of the section. ***Texas Oil & Gas Corp. v. Rein, Okl., 534 P.2d 1277 (1974).***

The power of the Corporation Commission to regulate the production of oil and gas is derived from the police power but is limited by the statutes authorizing such regulation. ***Helmerich & Payne, Inc. v. Corporation Commission, Okl., 532 P.2d 419 (1975).***

Lessees

Barton v. Cleary Petroleum Corp., Okl.Cr., 566 P.2d 462 (1977).

Ward v. Corporation Commission, Okl., 501 P.2d 503 (1972).

Royalty interests

Where royalty provision of oil and gas lease called for payment of one-eighth to lessor, plaintiff's assignor, "at the market price at the well for gas sold," where corporation commission subsequently entered a spacing order stating that all royalty interests within a unit would be communitized and each owner would participate in royalty from a well drilled thereon in the relation his acreage bore to total unit acreage, where plaintiff was paid a royalty out of all production from well in proper proportion, but where prices for gas received in sale by defendant, plaintiff's lessee, were higher than prices sold by other working interest owners, defendant was not required to pay plaintiff in addition, out of its working interest, as a statutory "other obligation," the difference between the low gas price and higher gas price. *Pierce v. Texas Pac. Oil Co., Inc., C.A. Okl., 547 F.2d 519 (1976).*

Where limited partnership bringing alleged class action on behalf of royalty owners entitled to be paid royalties under terms of certain oil and gas leases or a pooling order of State Corporation Commission covering a gas well claimed that section of land in which class owned all of mineral interest was established by order as one 640-acre drilling and spacing unit for production of gas from common source of supply and that a subsequent order pooled all oil and gas interests for production from formation in that section, class members had common and undivided interest in one-eight royalty interest in all gas produced from pooled formation by virtue of communitization of their fractional mineral interests and, accordingly, claims of each class member were joint or common and could be aggregated to satisfy federal jurisdictional amount requirement. *Rochet Oil & Gas Co. v. Arhla Exploration Co., D.C.Okl., 435 F.Supp. 1303 (1977).*

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF FLYING DIAMOND OIL CORPORATION FOR AN ORDER PERMITTING THE DRILLING OF AN ADDITIONAL WELL IN SECTION 9, TOWNSHIP 21 NORTH, RANGE 5 WEST, GARFIELD COUNTY, OKLAHOMA, TO PRODUCE FROM THE MISSISSIPPI FORMATION.	) CAUSE CD NO. 58861
IN THE MATTER OF THE APPLICATION OF LORENE ROGGOW FOR AN ORDER DELETING 640-ACRE MISSISSIPPI LIME, BIG LIME-OSWEGO AND MISENER-HUNTON SPACING COVERING SEC. 9-21N-5W, GARFIELD COUNTY, OKLAHOMA, AND FOR AN ORDER EXTENDING 160-ACRE MISSISSIPPI LIME, BIG LIME-OSWEGO AND MISENER-HUNTON SPACING TO COVER SAID SECTION.	) CAUSE CD NO. 57690) ORDER NO. 152489

REPORT OF THE COMMISSION

These Causes came on for hearing before Harry E. Brown, Jr., Acting Trial Examiner for the Corporation Commission of the State of Oklahoma, on the 13th day of March, 1979, at 9:00 A.M., Jim Thorpe Building, Oklahoma City, Oklahoma, for the purpose of hearing, tak-

ing testimony, and reporting findings and recommendations to the Commission.

C. Harold Thweatt, Attorney, appeared for the Applicant, Flying Diamond Oil Corporation in Cause C. D. No. 58861; Harry C. Marberry, Attorney, appeared for Lorene Roggow in Cause C. D. No. 57690; and Harvey H. Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the Causes and filed his report to which Exceptions were filed by Lorene Roggow. After hearing the arguments on the Exceptions on April 17, 1979, the Commission adopts the Report of the Trial Examiner and finds as follows:

FINDINGS

1. That Cause C. D. 58861 is an Application requesting permission to drill an additional well in Section 9, Township 21 North, Range 5 West, Garfield County, Oklahoma, to produce oil and gas from the Mississippi Lime. The Application alleges that another well is necessary in order to protect correlative rights and prevent underground waste.

2. That Cause C. D. 57690 is an Application requesting an order deleting 640-acre Mississippi Lime, Big Lime-Oswego and Misener-Hunton spacing covering Section 9-21N-5W, Garfield County, Oklahoma, and extending 160-acre spacing for said formations to cover said Section.

3. That above causes were joined for the purpose of hearing by agreement of the parties named herein.

4. That notice has been given in all respects as required by law and by the Rules of the Commission.

5. Mr. George E. Fort testified for Lorene Roggow, the owner of the minerals underlying the S/2 of the herein described Section 9. He testified only one well, No. 1 Pralle had been drilled in Section 9, completed in the Mississippi formation. Nearly all of the township was originally spaced for 640-acre Mississippi gas or 80-acre oil and gas spacing for the formation. In 1978, the Commission deleted 640-acre Mississippi spacing covering Sections 5 and 8 which are contiguous to Section 9 on 160-acre units. Sections 10, 15 and 22 have been deleted from 640-acre Mississippi spacing and established 80-acre spacing for said formation.

The witness attempted to show that the situation in Sections 5 and 8 was similar to the situation in the subject Section 9. That the first well in Section 5 was drilled in the NW/4 and completed in the Mississippi but later plugged; that the second well was drilled in August, 1977, in the NE/4 and completed as a well producing both oil and gas from the Mississippi; that the section was deleted and a third well drilled in the SE/4 of Section 5 in May, 1978, and a fourth well drilled in the SW/4 of Section 5 in November, 1978. That the first well was drilled in the NE/4 of Section 8 in 1969 and that well has been plugged and a second well has been drilled, after deletion and respacing, in the NW/4 of Section 8. That witness concluded that deleting and spacing resulted in more wells being drilled faster than does increased density, and he recommended to the Commission that they delete 640-acre Mississippi spacing from under Section 9 and establish 160-acre spacing for said formation underlying said section. In this connection, the witness did not think that the Mississippi should be developed on 80's and it was his opinion that these wells would produce approximately 30-40,000

barrels of oil and 500 MMCF of gas, and that the oil would just about pay the costs of drilling, which are about $350,000 and the gas sales would constitute the profit. He testified that there was a change of condition in the knowledge of the area by the drilling of wells on a density of less than 640-acres to test the Mississippi formation, showing that one well will not drain the recoverable hydrocarbons from under a 640-acre drilling and spacing unit, and requested that the deletion and respacing plan be followed instead of increased density.

6. Mr. Ed Staats testified for Flying Diamond. He stated Flying Diamond's position is that the Flying Diamond Pralle #1-9 Well in the NE/4 of Section 9 is a Mississippi gas well that is attributable to the 640-acre Mississippi unit. That Flying Diamond wants permission to drill another well in the NW/4 of Section 9 to produce from the Mississippian. The testimony showed quite conclusively that the only production of interest in the area is the Mississippi production.

He testified that he is Flying Diamond's manager in the area; that the Pralle #1-9 Well, was completed as a gas well on April 15, 1977, and has a gas/oil ratio at the present time of approximately 26,000 cubic feet of gas to each barrel of oil; the well is producing about 5 barrels of oil per day; that the sharing of the production from the Pralle Well has been on a 640-acre basis, and that it would be unfair for the Commission to delete and establish 160-acre drilling and spacing units.

Flying Diamond requested the Commission to give it a 6-month's grace period in which to protect its leases in Section 9 in the event the Commission decides to destroy the 640-acre unit and establish 160-acre drill-

ing and spacing units. The Roggow testimony was that Section 5 had been deleted from 640-acre spacing by Order No. 133021 and that Section 8 had been deleted by Order No. 13978. The testimony showed that the Mississippi wells in Sections 5 and 8 are oil wells as contradistinguished from gas wells.

That it has been the policy of the Commission where there has been a sharing of production to intensify drilling rather than re-spacing. The recent Garfield County order is an exception to long established policy.

7. Both parties agree a new well is needed. Flying Diamond filed their Application January 31, 1979 wherein it sought increased density. Lorene Roggow filed her petition November 13 to delete 640-acre spacing and respace on 160-acre. However, the Pralle #1-9 well in Section 9 was completed on April 15, 1977. That equities have been established on the basis of a 640-acre unit and payments have been made to all owners within said unit. That Flying Diamond indicated the unit would be developed on the basis of increased density. Edwin F. Pralle, the owner of the mineral interest in the NE/4 of Section 9, testified he had been sharing 75% of the proceeds of the Pralle #1-9 well with the other owners in Section 9 and he thought it fair to share in any future wells in the Section.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That the Application of Lorene Roggow in CD No. 57690 be and the same is hereby denied.

2. That the Application of Flying Diamond Oil Corporation in CD No. 58861 for permission to drill another well in Section 9, Township 22 North, Range 5 West, Garfield County, Oklahoma, to produce oil and gas from the Mississippi Lime is granted. Said well shall be commenced within one hundred twenty (120) days after the date of this Order and shall be located at some point in the 640-acre drilling and spacing unit not closer than 1320 feet of the unit boundary. Authority to drill said well terminates unless said well is commenced within the specified period.

3. There shall be but one gas allowable for the 640-acre gas unit which shall be producible from the well or wells selected by operator. All gas wells shall for allocation purposes be reported as a single unit. The operator may select the well to be tested for the required annual test and shall report the results as the test for the unit. The allowable for the unit shall be based on the annual test. Production from all gas wells shall be combined and reported by the purchaser and the operator as the production from the unit.

4. The well authorized by this Order is necessary to effectively and efficiently drain a portion of the Mississippi Formation common source of supply underlying the 640-acre drilling and spacing unit which cannot

be effectively and efficiently drained by the existing well.

DONE AND PERFORMED this 27 day of April, 1979.

CORPORATION COMMISSION OF OKLAHOMA

Hamp Baker, Chairman

Bill Dawson, Vice Chairman

Norma Eagleton, Commissioner

ATTEST:

Ed Overholser, Secretary

ADDITIONAL PARTIES TO THE OKLAHOMA CORPORATION COMMISSION PROCEEDING BELOW

Harvey W. Dierksen
Daisy L. Dierksen
Albert L. Dierksen
Jane W. Dierksen
Mary L. Dierksen
Deborah M. Sattehmeier
Clyde E. Phillips
June L. Phillips
F. E. Clowdus
Lenna D. Clowdus
DeWayne R. Atherton
Eva M. Atherton
Beatrice F. Strueben
John E. Struben
Daniel J. Jantz
Don Perry
Helen S. Perry
Coletta Perry
Mary E. Holland
Mike J. Holland
Walter E. Krumrei, Jr.
Marilyn L. Krumrei
Martha Marie Brakhage
Chris Brakhage
Ruby L. Frey
Rosa May Dierksen
Fred A. Dierksen
Eldon J. Craig
Aletha Craig
Beulah Craig
E. L. Alexander
Estella F. Alexander
J. Louis Lamunyon
Velma Lamunyon
Kenneth G. Fischaber
Lucius F. Pratt
Eva H. Tathwell

Letha Pratt
Ebba M. Johnson
William F. Johnson
Spencer Dixon
William J. Kruchenberg
Ann C. Crandall
Max E. Crandall
Carolyn E. Semrad
Alfred E. (Gus) Semrad
Cecile Watts
Lorene Richards
Arthur Davis
Henry Davis
Edith Davis
Roland V. Ehlers
Anton J. Semrad
Florence G. Kaupke
Carl Brune
Caroline S. Brune
John Brune
Delmer Brune
Gerhard J. Brune
Paul W. Brune
Gertrude A. Brune
Elmer Brune
Cecil Oringderff
Deloros Oringderff
Zeda Theilen
Theodore A. Hudnall
Scott Benkendorf
Sally Benkendorf
Iris Benkendorf
Janice Gratke
Lee Gratke
Mark Benkendorf
Wilma J. Benkendorf
Dale Baade
Marcella Davis Rodgers
Isabelle J. Buckminster Ward
Anna L. Lauppe
William G. Lauppe

Lois H. Lauppe
Barbara Lauppe Kellert
Albert E. Kellert
Irene Lauppe Dautenhahn
Irmen Dautenhahn
Freeda Ann Benkendorf
Leona M. Campbell
Leighton E. Campbell
Letha Sharp
Rex Lamunyon
Elna Lamunyon
Melvin Benkendorf
Delphine Benkendorf
Hazel Hudnall
Sybil Buckminster
F. E. Buckminster
Isabell Kerfoot
Theron W. Dixon
Carolyn E. Semrad
Alfred E. (Gene) Semrad
Anton J. Semrad
Herbert D. Coulter
Willa Mae Coulter aka (Mrs. Herb Coulter)
Mary Leigh Coulter
Glen Ott
Mrs. Glen Ott
Glenn Courter
Earl Parker, Jr.
Mrs. Earl J. Evans
Mrs. Earl Baker
Marvin W. Baker
Barbara A. Baker
Vonnie Roth

PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES OF PETITIONERS

Amerada Hess Corporation

Wyatt, Inc.
Solar Gas, Inc.
Oasis Oil Company of Libya, Inc.
Bushehr Petroleum Co.
Matco Tankers (U.K.) Ltd.
Anglomar Shipping Company, Ltd.
First United Shipping Corp.
Second United Shipping Corp.
Third United Shipping Corp.
Interocean Tanker Corp.
Granreunion Co.
Atles Marine Co.
Artemis Marine Co. L.P.
Ariadne Co. L.P.
St. Croix Petrochemical Corp.
Conmar Terminals, Ltd.
D'Ippolito Oil Company
Meadville Corporation
Reserve Terminal Corporation
Second Reserve Terminal Corp.
South Jersey Terminal Corp.

Atlantic Richfield Company

ARCO Oil Limited
ARCO Solar Europe, Inc.
ARCO Solar Far East Pte. Ltd.
Arilan, S.A. de C.V.
Atlantic Richfield Medical Products (Ireland) Limited
Alyeska Pipeline Service Company
Black Lake Pipe Line Company
Bingham Development Company
Badger Pipe Line Company
Blair Athol Coal Pty. Ltd.
Caribou-Chaleur Bay Mines, Ltd.

Caribou-Smith Mines, Ltd.
Chile Copper Company
Compania de Petroleo Ganso Azul, Ltda.
Compania Mexicana de Petroleo "El Charro", S.A.
Colonial Pipeline Company
Cook Inlet Pipeline Company
Defender Mining and Milling Corporation
Dragon Consolidated Mining Company
Delaware Bay Transportation Company
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Flower Street Ltd.
Gas de Chile S.A.
Gravity Adjustment Inc.
Hydrokem Performance Chemicals Company
Iricon Agency Ltd.
Kenai Pipe Line Company
Lavan Petroleum Company
Mayflower Mining Company
Middle Swansea Mining Company
R.W. Miller (Holdings) Limited
Montoro, Empresa Para La Industria Quimica, S.A.
Nihon Oxirane Company, Ltd.
New Bingham Mary Mining Company
North Lily Mining Company
Oxirane Technology (Japan) Company
Oil Shippers Service, Inc.
P.T. Arutmin Indonesia
Park Cummings Mining Company
Park Premier Mining Company
Patten Mining Company
Platte Pipe Line Company
Smoke House Copper Mining Company
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Trans Mountain Oil Pipe Line Company
West Mayflower Mining Company
Hardy Oil Company
Sinclair Venezuelan Oil Company

Champlin Petroleum Company

Union Pacific Corporation

Ladd Petroleum Corporation

None

Mack Oil Company

None

Odessa Natural Corporation

El Paso Exploration Company
The El Paso Company

Oklahoma Natural Gas Corporation

None
Name has been changed to ONEOK, Inc.

Union Texas Petroleum, a Division of Allied Chemical Corporation

Burris Mills, Incorporated
Quantatron, Inc.
Manbritt Industries, Inc.
Aliada Quimica, S.A., Spain
D. Stemple A.G., West Germany
Haas'sche Schriftgiesserei A.G., Switzerland
Klippan Italia, S.p.A., Italy
L.I.N.E.B., S.A., France
Morisawa-Linotype, Ltd., Japan
Nippon Amorphous Metals Company, Ltd., (NAMCO) Japan
Quimica Industrial Norte de Sao Paulo, Ltda., Brazil
Sociedade Fornecedora de Minerios, Ltda., Brazil
Sofratype S.A., France
Supersulfato Industrias Quimicas, Ltda., Brazil
Chico Corporation
Leaseway All Services, Incorporated

Woods Petroleum Corporation

None

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Nos. 81-2328, 81-2329

In The

Supreme Court of the United States

October Term, 1982

Union Texas Petroleum, a Division of Allied Chemical Corporation, *et al*,

Petitioners,

v.

Corporation Commission Of Oklahoma and Harvey W. Dierker, *et al*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma

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BRIEF IN OPPOSITION OF RESPONDENT CORPORATION COMMISSION OF OKLAHOMA

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August 20, 1982

QUESTION PRESENTED

Whether this Court should review an order issued by the Oklahoma Corporation Commission in furtherance of its oil and gas conservation jurisdiction, affirmed by Oklahoma's highest court as supported by substantial evidence, and entered pursuant to a statutory regulatory scheme "designed to curb waste of natural resources and to protect correlative rights" and held valid in *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 185 (1950).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Nos. 81-2329 and 81-2320

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, *et al*,

Petitioners,

vs.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, *et al*,

Respondents.

BRIEF IN OPPOSITION OF RESPONDENT CORPORATION COMMISSION OF OKLAHOMA

Respondent, Corporation Commission of the State of Oklahoma, respectfully urges this Court to deny the petitions for writs of certiorari by which Union Texas Petroleum, et al, and Harper Oil Company seek review of the judgment of the Supreme Court of Oklahoma entered in this proceeding.

STATE CONSTITUTION AND STATUTE INVOLVED

Article IX, § 20 of the Oklahoma Constitution appears at pages 1-2 of the brief of respondents' Harvey W. Dierksen, et al.

52 Okl. Stat. § 87.1(d) appears in petitioners' Joint Appendix at pages 93a-94a.

STATEMENT OF THE CASE

This case involves an accumulation of oil and gas, called the Mississippian Formation, underlying 88 sections of land in Oklahoma. Pursuant to its statutory duty the Oklahoma Corporation Commission regulates the number and location of wells permitted to be drilled and produced from the Formation. Part of its duty, in prevention of waste of oil or gas, is to update its orders, rules and regulations when changed conditions or a change in knowledge of conditions so require.

The appealed order was issued by the Commission, after seven (7) days of hearing evidence, because the Commission was convinced that the current knowledge of conditions in the Formation requires a new approach to the development of the Formation if the greatest amount of economically recoverable oil and gas is to be produced therefrom.

In 1962, the first orders involving the Mississippian Formation in this area were issued. Since then, in addition to Order No. 148243 for which a review is sought in this case, the Commission has continually reviewed its issued orders and has modified many of them in those instances where the conditions have required that such be done. Petitioners are challenging Order No. 148243 which the Commission believes to be essential if waste of oil and gas is to be prevented in the Formation.

The Oklahoma Corporation Commission was created in 1907 by the State Constitution in Article IX, Sections 15-18. The Commission consists of three elected commissioners who must remain strictly independent of

the industries they regulate. Originally given broad powers to supervise, regulate, and control all transportation and transmission companies, its authority was expanded to include the gas[1] and oil[2] industries in 1913 and 1917 respectively. After seventy-five years, the majority of the Commission's work now focuses on oil and gas — Oklahoma's foremost natural resources. The Commission has exclusive authority over oil and gas conservation, well drilling and operation, and pipeline construction.

The Commission's 1962 orders involved here (Nos. 49133 and 50337, both as amended) established 640-acre spacing units in the Mississippian Formation. Based on the best available knowledge known to it at that time, the Commission determined that only one well per 640 acres was necessary to adequately and effectively drain the gas and gas condensate from the Formation.[3] Beginning in 1963 a series of modifications of those basic orders was made to prevent waste and protect correlative rights.[4] In the instance of each modification, the Commission took action only after a proper showing of changed conditions in or changed knowledge about the Formation.

In the late 1970s respondent Harvey W. Dierksen and a number of other mineral owners applied to the Commission for a decrease in the size of the spacing units. They contended that current knowledge shows that a single well is not capable of draining 640 acres. The

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[1] 1913 Okl. Sess. Laws ch. 198.
[2] 1917 Okl. Sess. Laws ch. 207.
[3] Pet. Jt. Appendix, at 49a, 61a.
[4] The modifications included orders to despace and to increase the number of wells in existing units. *See*, Pet. Jt. Appendix, at 49a-64a.

Commission agreed and issued the order which is under review. That proposed modification was opposed by petitioners who maintained that increased density, i.e., authorizing more than one well to each 640-acre spacing unit, was the action which the Commission should have taken. The Commission held a hearing, received exhibits and heard expert testimony. It concluded that conditions in the Formation and knowledge of such conditions had changed, and that more wells were needed to achieve the goal of effective and efficient recovery of oil and gas, to prevent waste and to protect correlative interests. Petitioners do not challenge here the Commission's finding that additional wells should be drilled to prevent waste and protect correlative rights. Union Texas Petroleum Petition, at 6.

Based on its experience and the evidence received during the hearing, the Commission found that a reduction in the size of the spacing units would best encourage the needed additional wells. It therefore reduced the size of the well spacing units from 640 acres to 160 acres.

Petitioners appealed to the Oklahoma Supreme Court to overturn the Commission's choice of remedy. Finding the Commission's choice of remedy supported by substantial evidence, the court affirmed.

ARGUMENT

Petitioners admit that the State of Oklahoma has a legitimate interest in preventing waste of its natural resources and in protecting the correlative rights of persons interested in those sources.[5] Pursuant to the regulatory system devised by the Oklahoma legislature, the Commission, upon proper proof that the alternative chosen is necessary to prevent waste or protect correlative rights, may either (1) despace — decrease the size of drilling units or (2) increase the well density within the existing units so as to permit more than one well in each unit. The Commission found on the evidence in this case that despacing would prevent waste and protect rights better than would increased density. The Commission found, *inter alia*, that prior authority for some increased density wells in the Formation had not been fully utilized or carried out with dispatch.[6] Petitioners label this finding as both "largely irrelevant" and "without substantial evidentiary support" and argue that such finding does not justify the selection of the despacing remedy because such action adversely affects Petitioners' leases.[7]

Such an argument does not merit this Court's attention. Once the Court is satisfied that legitimate state interests are at stake, and that a rational system to effectuate them is being used,[8] the Court should not concern itself with evaluating the specific method chosen. As was clearly stated over thirty years ago:

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[5] Union Texas Petroleum Petition, at 17.

[6] Pet. Jt. Appendix, at 50a-51a.

[7] Union Texas Petroleum Petition at 10.

[8] This Court has already evaluated the Oklahoma regulatory system and found it reasonably related to a legitimate state goal. *See, Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 185-86 (1950).

> "It is no concern of ours that other regulatory devices might be more appropriate, or that less extensive measures might suffice. Such matters are the province of the legislature and the Commission."

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, 186 (1950).

What petitioners are seeking also would seriously impair the effectiveness of the Commission. The Oklahoma legislature recognizes that different remedies might be necessary to fit different circumstances. In 52 Okl. Stat. § 87.1(d) it gave the Commission flexibility to choose one of two remedies based on the circumstances involved. If the Commission is forced to always use one remedy — increased density — its flexibility is impaired and it is less able to perform its duty of preventing waste and protecting correlative rights.

Petitioners' assertion that the Commission's de-spacing remedy is an "aberration"[9] is inaccurate. The Commission considers each application on the basis of the evidence presented, and regularly grants de-spacing when it is convinced that de-spacing is more likely than increased well density to prevent waste and protect correlative rights. *See, e.g. Union Oil Co., of California v. Brown*, 641 P.2d 1106 (Okl. 1981) (Commission order to de-space affirmed); *see also, Kuykendall v. Corporation Commission*, 634 P.2d 711 (Okl. 1981) (Commission ordered de-spacing as to certain formations).

This Respondent concurs with and adopts the arguments made by Respondents, Harvey W. Dierksen *et al*,

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[9] Union Texas Petroleum Petition, at 23.

in their Brief in Opposition that Petitioners have not raised any important public issues which merit review by this Court and that Petitioners have failed to demonstrate why this case presents any novel or important federal constitutional questions not already addressed in prior Supreme Court decisions relating to regulation of the oil and gas industry under state police power.

CONCLUSION

For the foregoing reasons, Respondent Commission urges that the petitioners for writs of certiorari be denied.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1981

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, *et al.*,
Petitioners,

v.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma

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BRIEF IN OPPOSITION OF RESPONDENTS HARVEY W. DIERKSEN, *et al.*

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QUESTIONS PRESENTED

The Oklahoma Corporation Commission held (i) that a change in knowledge of the draining ability of the gas wells in the Mississippian Formation justified a change in gas well spacing from one well per 640 acres to one well per 160 acres (petitioners do not challenge this finding); and (ii) that the evidence showed the better way to develop and produce the oil and gas from and encourage the drilling of the additional wells in the Mississippian Formation was to reduce the size of the one-well drilling units from 640 to 160 acres, rather than increase the number of permissible wells from one to four within the existing 640-acre units. The Oklahoma Supreme Court concluded that these findings were supported by substantial evidence. The questions are:

Whether this Court should review a judgment of a state's highest court based on adequate and independent state grounds which obviate the need to consider any federal question.

Whether a factual conclusion of a state administrative agency, affirmed by the state's highest court as supported by substantial evidence, raises any important public issue that merits review by this Court.

Whether it is premature for this Court to review a decision which petitioners claim *may* unconstitutionally impair their leases, where that precise question is the subject of pending quiet title actions recently filed by petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Nos. 81-2329, 81-2330

UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, *et al.*,
Petitioners,

v.

CORPORATION COMMISSION OF OKLAHOMA and HARVEY W. DIERKSEN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma

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BRIEF IN OPPOSITION OF RESPONDENTS HARVEY W. DIERKSEN, *et al.*

Respondents Harvey W. Dierksen and 110 other mineral owners [1] of land underlain by the Mississippian Formation, a combination reservoir containing both oil and gas, in Major and Garfield Counties, Oklahoma, respectfully urge this Court to deny the petitions for writs of certiorari by which Union Texas Petroleum and other oil and gas lessees seek review of the judgment of the Supreme Court of Oklahoma entered in this proceeding.

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[1] The names of all additional mineral owner respondents are listed on pages 107a through 109a of Petitioners' Joint Appendix (hereinafter "Pet. Jt. Appendix at ——").

STATE STATUTE AND CONSTITUTION INVOLVED

The principal statute involved in this proceeding, 52 Okla. Stat. § 87.1(d) (1981), is set out in petitioners' Joint Appendix at 93a-94a.

Okla. Constitution art. IX, § 20, provides (in pertinent part):

> "The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts. In all other appeals from orders of the Corporation Commission the review by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and substantial evidence. Upon review, the Supreme Court shall enter judgment, either affirming or reversing the order of the Commission appealed from."

STATEMENT OF THE CASE

We, the 111 Dierksen respondents, are individual owners of parcels of land underlain by the Mississippian Formation, and have leased our mineral interests to petitioners and other operators for oil and gas exploration and production.[2] Since the early 1960's, and until this

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[2] Because we, as owners, receive royalties on oil and gas extracted from wells located on a drilling unit in which our parcels are included, we benefit when the maximum amount of hydrocarbons is produced from such unit and is sold at the maximum price. Both of these factors are largely in the control of the lessee. Ideally, a lessee who controls development of our land will share our interest in maximizing immediate profits. This is not always the case, however. Often a lessee may have an interest in deferring production in order to hold the minerals in reserve inventory (against which it

case arose, our leased parcels have been subject to 640-acre unit spacing, pursuant to the orders of the Oklahoma Corporation Commission. In other words, the Commission had originally found that in the Mississippian Formation, one well was adequate to effectively and economically drain the oil and gas underlying 640 acres (*i.e.*, one square mile).[3]

After entry of the initial spacing orders in 1962 (Nos. 49133 and 50337), Commission administration of the field was not dormant. In fact, numerous modifications of its primary orders were made during the ensuing 16 years. These modifications, made to promote proper unit drainage, included enlarging the spacing of some units from 80 acres to 640 acres; reducing the spacing of some units from 640 acres to 160 acres; and granting authority to increase drilling density in some units.[4] Experience with increased drilling density, however, has not been

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can borrow money). Similarly, while a lessee would ordinarily share our desire to get the highest price possible for extracted oil and gas, when the lessee owns the next downstream processing facility (as petitioner Union Texas Petroleum does), its incentive to sell the hydrocarbons to itself at the *lowest* price possible minimizes our royalties. Other conflicts of interest between landowners and lessees can exist.

[3] The typical land ownership pattern here is 160-acre parcels, four of which comprise a standard 640-acre drilling unit. Since each parcel owner is free to select a different lessee, several lessees may have an interest in the unit. The several lessees must agree on such things as who will drill the one well, and how to apportion drilling costs. Oklahoma law authorizes the Corporation Commission to facilitate these decisions if the parties cannot agree.

[4] Increased drilling density authorizes the unit lessees to drill more wells in the unit. Reduction of spacing means the size of the drilling units is decreased. *See* Pet. Jt. Appendix at 49a-64a for the Commission's recitation of the extensive history of Orders 49133 and 50337, and modifications thereto, the two series of orders affecting the subject area.

encouraging; as the Commission found in its review of the extensive history of applicable orders, prior grants of authority to increase drilling density had not been diligently pursued or fully utilized.[5]

In the 1970's, we became dissatisfied with the 640-acre spacing orders because knowledge of the geologic, economic and reservoir conditions in the Mississippian Formation had become available which made it clear that one well was not capable of draining the oil or gas in the existing sized unit. We recognized that more wells should be drilled. As a consequence, we applied to the Commission to reduce the spacing of drilling units from 640 to 160 acres.

Under Oklahoma law, the Commission may modify existing spacing orders, after hearing, if geologic, economic or reservoir conditions have changed or knowledge of those conditions has changed, and if modification will prevent waste or will protect correlative rights of persons with interests in a common source of supply.[6] As petitioners admit, the governing statute, 52 Okla. Stat. § 87.1(d), expressly provides that modification may take the form of either increased density or reduced spacing. We preferred reduced spacing rather than increased density because, as mentioned, experience shows the former gives a better chance of new wells being drilled than does the latter.[7]

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[5] *Id.* at 50a-51a (Commission Finding No. 3(a)3.).

[6] "Correlative rights" under Oklahoma law refer to the interrelated rights that all lessees and mineral owners have in a common source of supply. "Common source of supply" means a single formation (pool) containing oil or gas or both, which is separated from any other oil and gas formations located above or below it.

[7] Increased density does not *require* that new wells be drilled; it merely provides authorization to drill which the lessee may or may not elect to use. On the other hand, when spacing is reduced, a well must be drilled on each new unit if each lease is to be perpetuated beyond its primary term. Although petitioners claim that increased

Petitioners (and other lessees holding leases to our minerals) opposed our application and urged maintenance of the status quo—that is, 640-acre spacing. Petitioners disputed our experts' testimony that more wells were needed,[8] but if our experts were correct, petitioners said, then the proper remedy was increased density of wells, not reduction of spacing.[9] Increased density is preferable to petitioners because it would assure them of holding all unit leases indefinitely so long as production from the

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density provides the same incentive to drill as reduced spacing, *see* Union Texas Petroleum Pet., at 18, that is absolutely not the case. For example, lessees often have an incentive to hold undrilled leases in reserve (and use their limited cash for other needs). Petitioners could have applied for permission to intensify drilling on all of their 640-acre units (and did, in fact, seek and obtain such permission for some units), but did not indicate motivation to seek authority to increase well density throughout the Formation until we commenced efforts to have the spacing reduced. We conclude from this that petitioners were content to keep most of the undrilled parcels in their reserve inventories. The court below noted that "for extended periods of time, Commission orders allowing additional wells on the basis of inability to recover known reserves have not been carried out." Pet. Jt. Appendix, at 24a. Another factor affecting incentive to drill is that increased density does not change the unit's allowable production (the amount of oil or gas per month the state allows to be produced from the unit), whereas reduced spacing carries with it a separate allowable for each new unit. Thus, four 160-acre units each with one well may be authorized to produce four times as much as a 640-acre unit with four wells on it.

[8] Petitioners no longer dispute this. *See* Union Texas Petroleum Petition, at 6.

[9] Applications to increase density on *some* of the units under scrutiny by the Commission had been filed. Such applications had *not* been filed for *all* units, however. To the extent footnote 4 on page 19 of the Union Texas Petroleum petition implies that petitioners had filed applications to increase density to four wells per 640-acre section on "all lands covered by the respacing application", such implication is incorrect. This alternative—increased density for all units—was advanced by petitioners in argument to the Commission only after the reduced spacing application was under consideration.

existing wells continued, whether or not they drilled any new wells.[10]

The Commission held a full oral evidentiary hearing during which it received exhibits and testimony regarding the current state of geologic, economic and reservoir knowledge of the Formation from expert witnesses offered by both petitioners and ourselves.[11] On the basis of this evidence, the Commission reached the following conclusions:

1. Both we and petitioners submitted comparable evidence with respect to (i) knowledge of geologic, economic and reservoir conditions in the Formation at the time 640-acre spacing was instituted, and (ii) existing knowledge of conditions of the Formation (Pet. Jt. Appendix, at 81a);

2. Although petitioners had, in previous applications, sought—and in all cases obtained—authority to increase well density on some units on the basis of changed conditions or a change in knowledge of conditions, they nonetheless argued before the Commission in the instant case that there has been no change in knowledge of conditions regarding 640-acre spacing (*id.*);

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[10] A typical oil and gas lease is made for a primary term (a set number of years) and endures so long thereafter as oil or gas is produced in paying quantities. If more than one leased parcel is included in a spacing unit, the production from a well on one parcel is attributed to all parcels in that unit. For example, if parcels A, B, C and D are included within a 640-acre unit and a well located on parcel A produces hydrocarbons, the leases to all four parcels continue in force as long as the one well is productive. If the production on parcel A ceases, and the primary terms of the leases to B, C and D have expired, the lease to each of the four parcels may expire, depending upon the lease provisions and the lessees' actions with respect thereto.

[11] The hearing lasted for seven trial days and involved testimony from four expert witnesses supporting the application and ten opposing it.

3. Petitioners urged that if additional wells were required, increased well density was preferable to reduced spacing (*id.*);

4. The Commission rejected increased density; it held that its interest in and duty and responsibility to prevent waste and protect correlative rights

> "require that the Commission not act in derogation of its interest, duty and responsibility by . . . an indirect delegation of its duty and responsibility [such as that urged by petitioners] to any owner whose subjective interests may be in conflict with the ends of waste prevention or correlative rights protection" (*id.* at 81a-82a);

5. Substantial evidence revealed that there was a change in conditions and a change in knowledge of conditions of the Formation in that "it is now known . . . that the Mississippian is far less conducive to being effectively and efficiently drained by one (1) well to each 640-acre unit than was supposed and contemplated" when that spacing was ordered in 1962 (*id.* at 82a);

6. "[E]conomically recoverable oil, gas and condensate are not being and will not be recovered" if 640-acre units are continued (*id.* at 82a-83a);

7. One well per 160-acre unit (*i.e.*, reduced spacing) is required to effectively and efficiently drain the reservoir, and such reduced spacing "is the proper relief . . . based on the substantial evidence herein" (*id.* at 83a, 85a).

On appeal to the Oklahoma Supreme Court, the Commission's order reducing spacing was affirmed by written opinion upon that court's application of the substantial evidence rule as required by Oklahoma law. Motions for rehearing were denied.

Petitioners attribute great significance to—and cast in a malevolent light—the fact that we have executed top leases (leases which only become effective if existing

leases expire) to persons who are not parties to these proceedings. Petitioners assert that the application for reduced spacing was motivated primarily, if not solely, by our desire to terminate petitioners' leases and to effect the top leases.

To the extent that petitioners are suggesting that the execution of a top lease is an inequitable or untoward action any fruits of which are necessarily tainted, they are in error for several reasons. First, we are mineral owners whose royalty earnings are totally dependent upon the amount of hydrocarbons our lessees reduce to production. If these minerals are economically recoverable but are not produced by the lessees (which is to say, are wasted), our property rights are thereby damaged or destroyed. Since it is in our best interests to capture the economically recoverable hydrocarbons, it is likewise in our best interests to seek a lessee with the greatest technical ability to recognize productive potential coupled with an incentive to maximize recovery of this potential.

Second, execution of top leases is not unusual.[12] They are most often proposed by a prospective top lessee who foresees the possible termination of the current lease through normal expiration, through exhaustion of the pool currently being tapped where an untapped pool may also underlie the parcel, etc. Of course, the value of the top lease depends upon the land's remaining productivity potential.

Third, and most significantly, whether or not top leases have been executed is irrelevant to this proceeding. Their existence has no effect on the geologic, economic or reservoir conditions of the Formation, nor on changes in the knowledge of those conditions, nor on the proper remedy for prevention of waste and the protection of correlative rights of owners—the only questions that Oklahoma law gives the Commission authority to consider.

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[12] One of the petitioners here, Atlantic Richfield Company, has a top lease in this area.

Neither the top leases nor the leases held by petitioners were in evidence before the Commission or before the Oklahoma Supreme Court on appeal, nor are they part of the record before this Court. Their absence is proper because "the Commission has no authority to consider leasing matters and such evidence has no place in a spacing application." [13] Since it is the Commission's order and the Oklahoma Supreme Court's affirmance thereof that form the subject of the petitions, matters outside the Commission's jurisdiction and not part of the record may not be considered here.

It is curious that petitioners complain about what they perceive as adverse effects of the reduced spacing order on the mineral owners of parcels with wells—the owners of the "A" parcels in the example in note 10, *supra*. Petitioners argue that the royalties from production on the A parcels have been shared with the mineral owners of the B, C and D parcels within a 640-acre unit, as if the A owners will be disserved by the Commission's order. The Court should know that 84 of us are owners of A parcels with wells, and we *support* the Commission's order; we disavow petitioners' complaints supposedly made on our behalf.[14]

REASONS FOR DENYING THE PETITIONS

Petitioners have advanced no good reason for this Court to assert certiorari jurisdiction to review this case. They do not challenge the constitutionality of the state statute under which the Commission acted. They challenge only its application as being in excess of the state's police power to regulate oil and gas production. However, this Court has held that a state's power to regulate oil and gas production is very broad; here, the Commission's choice

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[13] Pet. Jt. Appendix at 51a-52a.

[14] If the well on the A parcel is continuing to produce, the A owner may be happy to earn his future royalty on 100% of the production, rather than only on 25%, as in the past.

of statutory remedy, as affirmed by the Oklahoma Supreme Court, was well within that power.

Moreover, petitioners have not demonstrated that the Commission's order has the effect of unconstitutionally depriving them of any property; nor *can* they so demonstrate, because that issue was not touched on below, and is the subject of new litigation filed by petitioners in the state courts.

1. The Judgment of the Oklahoma Supreme Court Is Based on Adequate State Grounds.

This Court has said it will not review state court judgments based upon adequate state grounds. *See, e.g., Young v. Ragen*, 337 U.S. 235 (1949). This is such a case.

The Oklahoma Supreme Court did not reach and did not need to reach the federal constitutional questions petitioners claim to have asserted in that forum. The Oklahoma court's opinion contains no discussion of or ruling on any federal constitutional issues; its judgment rested on well-settled interpretation of state statutory language.[15]

The Oklahoma Constitution provides two classes of review for appeals from Corporation Commission orders: If the appeal involves an asserted violation of the federal or state constitution, the Oklahoma Supreme Court must undertake an independent review of the law and the facts. In all other appeals, the court's review is limited to a determination whether the Commission regularly pursued its authority and whether the order is supported by the law and substantial evidence. Okla. Const. art. IX, § 20, quoted at page 2, *supra*.

The Oklahoma court declined to apply the "independent" review standard. It held that any allegations of

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[15] We might add that our search of the Corporation Commission record revealed no indication that petitioners raised their federal constitutional questions before the Commission.

constitutional violations that are asserted only through an appellant's challenge that a Commission order is not supported by substantial evidence is insufficient to invoke such independent review. Pet. Jt. Appendix, at 22a. *Accord, Cameron v. Corporation Commission*, 414 P.2d 266, 269 (Okla. 1966). Although it did not so state expressly, the court presumably deemed petitioners' constitutional claims to be of that class; as a consequence, the court employed the substantial evidence review standard applicable to "all other appeals"—those not involving an asserted violation of a constitutional right. This is obviously a state ground, not a federal one. Nor, indeed, do petitioners challenge here the review standard followed by the Oklahoma court.

Appellants below challenged Order No. 148243 on grounds (i) that there was no evidence of a substantial change in conditions or change in knowledge of conditions of the Mississippian Formation to support a modification order,[16] and (ii) that there was insufficient evidence to sustain the Commission's choice of remedy. The Oklahoma court rejected both contentions. Petitioners no longer contest the finding that one well will not drain a 640-acre unit; they challenge here only the remedy selected by the Commission: reduced spacing as opposed to increased well density on a unit-by-unit basis. This challenge comes in the form of an alleged lack of substantial evidentiary support.[17]

When fashioning a remedy to prevent waste or protect correlative rights in a common source of supply subject to an existing spacing order after a change in conditions or change in knowledge of conditions has been demonstrated, Oklahoma law authorizes the Corporation Com-

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[16] The Corporation Commission has no authority to modify an existing spacing order in the absence of a substantial change in conditions or substantial change in knowledge of conditions in the subject area. *Phillips Petroleum Co. v. Corporation Commission*, 482 P.2d 607, 609-10 (Okla. 1971).

[17] Union Texas Petroleum Petition, at 10.

mission either to increase well density or to decrease the size of the spacing units. 52 Okla. Stat. § 87.1(d) (1981). The Oklahoma Supreme Court has upheld the Commission's authority under this statute. *See, e.g., Spaeth v. Corporation Commission*, 597 P.2d 320 (Okla. 1979); *Phillips Petroleum Co. v. Corporation Commission*, 482 P.2d 607 (Okla. 1971).

In order to determine whether the Commission's choice of remedy was supported by substantial evidence, the court was bound to consider the evidence "to determine whether it implies a quality of proof inducing a conviction that the evidence furnished a substantial basis of facts from which the issue could be reasonably resolved". Pet. Jt. Appendix, at 23a. The court is not at liberty to substitute its judgment for that of the Commission. *Id. See also, Spaeth v. Corporation Commission, supra*, at 322.

With respect to petitioners' argument that there was no substantial evidence to support the choice of reduced spacing over increased density, the court stated:

> "Such an allegation of error is insufficient to disturb the Commission's order on the basis of statutory authority and the evidence disclosed in the record. Factually, the record contains indicia that for extended periods of time, Commission orders allowing additional wells on the basis of inability to recover known reserves have not been carried out." Pet. Jt. Appendix, at 24a.

The court consequently held:

> "The Commission's conclusion that past density applications by owners in the unit have not uniformly developed the common source, and have not been carried out with dispatch, negates the allegation that both statutory remedies are equally suited to the facts, and substantial evidence supports the choice of alternatives made by the Commission." Pet. Jt. Appendix, at 25a.

The Oklahoma Supreme Court properly applied Oklahoma law in reaching its judgment, and that state law was an adequate basis for full resolution of the issues. Where nonfederal grounds are adequate to sustain a state court's judgment, this Court has said it will not assert jurisdiction to review that judgment. *Young v. Ragen*, 337 U.S. 235, 238 (1949); *Adams v. Russell*, 229 U.S. 353, 358 (1913).

Petitioners do not challenge the constitutionality of the state statute upon which the Oklahoma court's judgment was based, nor do they argue that the statute was an inadequate independent ground to support that judgment. Rather, as stated above, petitioners attack the underlying order by arguing that the Commission's election of a valid remedy made available by the Oklahoma legislature is not supported by substantial evidence.

This Court has emphasized that it "do[es] not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). Nonetheless, this is exactly what petitioners ask this Court to do.

When the Commission selected its remedy, it was faced with petitioners' express position that additional wells were not necessary to properly develop the field; this position was confirmed by prior failure to diligently and fully utilize authority granted in late 1963 for such development. The Commission cannot order any person to drill a well. It merely has the authority to *permit* drilling where necessary for oil and gas conservation, and to select the method which provides the greater incentive for achievement of that objective.[18] Thus, petitioners' plea

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[18] With regard to the question of incentive to drill, petitioners assert: "[I]f the Commission's concern was that a lessee would have no incentive to drill additional wells, Oklahoma law *requires* a lessee to drill such wells as may be necessary for full development, or

that both remedies are "manifestly the same" [19] ignores reality. The Commission concluded that it would be improper to delegate its responsibility for waste prevention and correlative rights protection to persons whose subjective interests "may be in conflict with [those] ends." [20]

It is this evidence that petitioners ask this Court to re-evaluate and find insubstantial and thereby substitute petitioners' choice of remedy for the Commission's choice of remedy. The Oklahoma Supreme Court, whose job it is to determine whether Commission findings are supported by substantial evidence, Okla. Const. art. IX, § 20, affirmed the order. This Court has declared that it "will intervene only in what ought to be the rare instance when the [substantial evidence] standard appears to have been misapprehended or grossly misapplied." *Mobil Oil Corp. v. Federal Power Commission*, 417 U.S. 283, 310 (1974), *quoting Universal Camera Corp. v. NLRB*, 340 U.S. 474, 491 (1951). This case would not seem to be that "rare instance."

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face cancellation of his lease. *Vincent v. Tideway Oil Programs, Inc.*, 620 P.2d 910 (Okla. [Ct. App.] 1980)." Union Texas Petroleum Petition, at 19 (emphasis supplied). As a review of the cited case demonstrates, this is not a wholly accurate statement. No Oklahoma statute *requires* a lessee to drill a well. Rather, Oklahoma, like all states, permits a party to a contract to sue for breach thereof. An Oklahoma mineral owner/lessor has access to the courts of that state to sue his lessee for breach of any lease covenant to develop the land. The lessor bears the burden of demonstrating that his lessee failed to meet the "prudent operator test" and must prove that he (the lessor) made timely demand for development. *Vincent*, *supra*, 915-16. Of course, win or lose, the lessor bears the cost and delay of his lawsuit. Even if the lessee wins, he normally is *then* given a chance to drill before the lease is cancelled. *See, e.g., Ferguson v. Gulf Oil Corp.*, 137 P.2d 940 (Okla. 1943). Only in egregious cases is the fear of being sued an effective incentive to a lessee to drill when he would otherwise prefer not to do so.

[19] Union Texas Petroleum Petition, at 18.

[20] Pet. Jt. Appendix at 82a.

2. The Petitions Do Not Raise Any Important Public Issue That Merits Review by This Court.

As Rule 17.1 states, certiorari will be granted "only when there are important and special reasons therefor." In this regard, "important" relates to issues that are important to the *public* as distinguished from the parties. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). Petitioners here have demonstrated no such issue of an important public nature that demands this Court's involvement. Rather, this is simply a case presented by a group of petitioners who are attempting to overturn an action with which they are displeased but which has no overriding significance except to the parties.

Petitioners lamely suggest that this Court should grant the requested review "for the guidance of state administrative agencies in discharging their police power responsibilities." [21] Surely this plea could be made by any litigant disappointed by any decision of any state agency. It is, however, hardly a sufficient reason for this Court to hear a cause where, as here, petitioners pose no new or significant federal question nor demonstrate that the administrative agency action, as affirmed by Oklahoma's highest court, conflicts with the decisions of this Court.

The police power at issue here is Oklahoma's regulation of oil and gas production. It is well-settled law, through pronouncements of this Court, that such regulation is a valid exercise of a state's police power. *See, e.g., Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179 (1950); *Champlin Refining Co. v. Corporation Commission*, 286 U.S. 210 (1932). In Oklahoma, as in other jurisdictions which follow the rule of capture, neither land owners nor their lessees have absolute title to oil and gas below the surface; the right to reduce these

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[21] Union Texas Petroleum Petition, at 12. *See also* Harper Oil Co. Petition, at 8.

hydrocarbons to possession through drilling is continually subject to the power of the state to take necessary steps to prevent waste and to protect correlative rights of all parties with interests in a common source of supply. *Champlin Refining Co. v. Corporation Commission*, *supra*, at 233-34; *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83, 89 (Okla. 1938), *appeal dismissed for want of jurisdiction*, 305 U.S. 376 (1939).

It was for those precise objectives that Oklahoma's regulatory power was exercised by the Corporation Commission when it entered the reduced spacing order:

> "[T]he Commission finds that it is necessary, under the evidence herein and for the purposes of the prevention of waste and the protection of correlative rights, that the Commission, authorize, provide for and establish the 160-acre drilling and spacing units requested by Applicants to the ends that a greater ultimate recovery of oil, gas, and condensate be had from the Mississippian, waste be prevented and the correlative rights of the owners of oil and gas interests therein be, to a fuller extent, beneficially enjoyed and protected." Pet. Jt. Appendix, at 85a.

Petitioners have failed to demonstrate why this case presents any novel or important federal constitutional question not already addressed in prior Supreme Court decisions concerning state oil and gas regulatory power. Nor have they asserted that Order No. 148243 conflicts with any pronouncement of this Court in those prior cases. Indeed, petitioners totally ignore the existence of all such prior decisions (which date back over eighty years; *see Ohio Oil Co. v. Indiana*, 177 U.S. 190 (1900)), including those involving federal constitutional challenges of Oklahoma Corporation Commission orders on precisely the same grounds that petitioners assert here: deprivation of property in violation of the Due Process Clause of the Fourteenth Amendment and impairment of contracts in violation of the Contract Clause. *See Palmer Oil Corp. v.*

Amerada Petroleum Corp., 343 U.S. 390 (1952); *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179 (1950); *Patterson v. Stanolind Oil and Gas Co.*, 305 U.S. 376 (1939); *Champlin Refining Co. v. Corporation Commission*, 286 U.S. 210 (1932).[22]

Instead, petitioners direct the Court's attention to cases wherein Fourteenth Amendment limitations of a state's police power were analyzed in a variety of other contexts: landmarks preservation law; sand and gravel excavation ordinance; fishing regulation; city zoning ordinance; and coal mining regulation.[23] Even when the Corporation Commission's order is tested under the analysis constructed by petitioner Union Texas Petroleum from these cases and this Court's decision in *Kaiser Aetna v. United States*, 444 U.S. 164 (1979) (examination of Congress's regulatory authority under the Commerce Clause), no constitutional infirmities are revealed.

The "economic impact on claimant" and "loss claimants will suffer" elements of petitioners' analysis are prematurely raised. No "impact" or "loss" can be measured at this time by any of the parties or by this Court because, as petitioners concede, they are presently litigating the question of the effect of the Commission's order in the state courts.[24] It should be presumed, until the contrary appears, that the Oklahoma courts will not permit petitioners to suffer an unconstitutional taking through application of the reduced spacing remedy.

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[22] Two of these cases, *Palmer* and *Patterson*, were dismissed *per curiam* for failure to raise a substantial federal question, citing previous decisions of the Court. *See also Anderson-Prichard Oil Corp. v. Corporation Commission*, 241 P.2d 363 (Okla. 1951), *appeal dismissed for want of a substantial federal question*, 342 U.S. 938 (1952) (Commission order challenged as violation of Due Process Clause of Fourteenth Amendment).

[23] *See* Petition of Union Texas Petroleum, at 15-16; Petition of Harper Oil Co., at 8.

[24] For a full discussion of this matter, *see* Section 3, *infra*.

Petitioners' further complaint that the order "interferes with reasonable investment-backed expectations" is not well taken. It is well-settled Oklahoma law that leases to land overlaying a common source of supply are continually subject to Oklahoma's inherent police power. *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83, 89 (Okla. 1938), *appeal dismissed for want of jurisdiction*, 305 U.S. 376 (1939). Consequently, any investment-backed expectations that may flow from those leases are likewise subject to the exercise of the state's authority.

The final prong of petitioners' analysis—availability and effectiveness of a less drastic alternative—merits little further discussion. The Commission determined that 160-acre spacing was the more effective of the two statutory remedies, and the Oklahoma Supreme Court found that substantial evidence supported this conclusion.

Petitioners' complaint that Order No. 148243 unconstitutionally impairs their contract rights is similarly devoid of merit. As noted above, none of the leases for which impairment is claimed is found in the record; thus, it is impossible for the Court to consider what, if any, effect the order has on them. Indeed, this Court has said that it will not consider matters which the court below did not consider and are not part of this Court's record. *Ciucci v. Illinois*, 356 U.S. 571, 573 (1958).[25]

It is a legal principle of long-standing that a lease made subsequent to the enactment of a statute cannot be constitutionally impaired by such statute. *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 249 (1922). The statutory provision at issue here, 52 Okla. Stat. § 87.1(d), was adopted in 1947.[26] Since none of the petitioners has demonstrated that any of their leases were in existence

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[25] *See also* note 13, *supra*, and accompanying text.

[26] 1947 Okla. Sess. Laws, p. 328, § 1. This provision was originally identified as § 87.1(c). The subsection letter was changed to (d) by subsequent amendment. 1977 Okla. Sess. Laws, ch. 76, § 1.

prior to the enactment of the statute, they cannot ask this Court to find that those leases have been constitutionally impaired by the statute's enforcement.[27]

Furthermore, petitioners' argument contradicts the "commonplace" principle that "the Contract Clause does not operate to obliterate the police power of the States." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978). Under petitioners' analysis, the Corporation Commission would forever be precluded from employing the statutorily authorized reduced spacing remedy with respect to any land subject to a lease that has been extended beyond its primary term by virtue of production from a well on a spacing unit created by a prior spacing order. The Contract Clause was not intended to make the state's power to act in promotion of the public benefit—here, the preservation of scarce natural resources and the protection of correlative rights—subservient to contracts between individuals. *See Manigault v. Springs*, 199 U.S. 473, 480 (1905); *accord, Anderson-Prichard v. Corporation Commission*, 241 P.2d 363, 367 (Okla. 1951), *appeal dismissed*, 342 U.S. 938 (1952).

Petitioners also argue that the entry of Order No. 148243 deprives them of due process because through it the Commission vacated prior spacing orders that had endured for some 16 years. If, as petitioners assert, such action indeed achieves the status of a "departure from prior norms" examined by this Court in *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973), the Commission is merely required to clearly set forth the grounds for such departure so that the reviewing court may determine whether the Commission acted within the scope of its authority. *Id.* As demonstrated above, the Commission complied fully with this

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[27] *Compare Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) and *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), the cases relied on by petitioners in the Union Texas Petroleum Petition, at 21-22. Both cases involved statutes enacted subsequent to execution of the contracts.

requirement, and the reviewing court found that the Commission had regularly pursued its authority.[28]

3. The Petitioners Prematurely Seek Review in This Court.

This Court has said that in order to qualify for review, a judgment must be both final and complete as to all the parties, as to the whole subject matter, and as to all causes of action involved. *Arnold v. United States for use of Guimarin & Co.*, 263 U.S. 427, 432 (1923). Such finality and completeness are not present in this case.

Petitioners acknowledge that litigation has been initiated—by petitioners themselves—to determine what, if any, effect the Commission's order will have on some of the leases of parcels where no drilling has been commenced.[29] Although petitioners "see no basis under Oklahoma law" for a contention that such leases terminated upon entry of that order, they assert that the question has never been decided by Oklahoma courts.[30] Nonetheless, petitioners ask this Court to review and reverse the Commission's order through constitutional adjudication before the Oklahoma courts have ruled whether, under state law, petitioners will suffer any undue harm.

In *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62 (1948), this Court was faced with a similar situation. There, appellant gas producers sought reversal of a Cor-

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[28] Petitioners characterize the subject order as an "aberration" of Corporation Commission practice. *See* Union Texas Petroleum Petition, at 23. The facts do not support this characterization. The Commission uses a reduced spacing remedy whenever it finds that remedy necessary to effectively and efficiently drain underlying hydrocarbons. We have gathered and reprinted in Appendix A hereto eleven orders—all issued in a recent 18-month period—that typify the Commission's willingness to reduce spacing when appropriate.

[29] Union Texas Petroleum Petition, at 6-7; Harper Oil Co. Petition, at 6. A typical complaint is Atlantic Richfield Co. v. Dresner, Garfield County District Court, No. C-82-350, filed May 27, 1982.

[30] Union Texas Petroleum Petition, at 7.

poration Commission order on Fourteenth Amendment grounds, although the order, as affirmed by the Oklahoma Supreme Court, had not terminated all the issues in the case. This Court declined jurisdiction because the judgment appealed from did not meet the statutorily-required test of finality. In a comment upon its authority to review only final judgments or decrees of a state's highest court, this Court stated:

> "Designed to avoid the evils of piecemeal review, this [finality prerequisite] reflects a marked characteristic of the federal judicial system, unlike that of some of the States. This prerequisite for the exercise of the appellate powers of this Court is especially pertinent when a constitutional barrier is asserted against a State court's decision on matters peculiarly of local concern. Close observance of this limitation upon the Court is not regard for a strangling technicality. History bears ample testimony that it is an important factor in securing harmonious State-federal relations."

Id. at 67.

Here, petitioners ignore this sound principle, and urge this Court's interlocutory involvement to save them from the "requirement" that they drill a number of wells at great cost [31] in "a short time", and from incurring additional litigation expenses.[32] With respect to the alleged drilling "requirement", two observations are in order. First, no Oklahoma state authority can *require* petitioners to drill any wells. Petitioners may *choose* to drill, providing their leases allow them to do so. Second, petitioners have argued that the increased density remedy

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[31] Petitioners assert that the total cost of 250 wells could exceed 100 million dollars. Union Texas Petroleum Petition, at 7. Putting aside the fact that petitioners offer no substantiation for this estimate, it must be recognized that such drilling costs are *investments*, not losses for which no opportunity for recoupment exists. If petitioners are unable or unwilling to extract the minerals, the top lessees apparently are.

[32] Union Texas Petroleum Petition, at 7.

they prefer would achieve "manifestly the same" drilling results as reduced spacing.[33] If that is so, they face the same drilling costs under the plan they attack as under the plan they support. One must again question whether petitioners have any intention of exercising full drilling authority under an increased density plan, if they were to succeed in getting it.

Petitioners' plea for salvation from litigation expenses merits little attention. As this Court has remarked, "the incurring of some loss, before a process preliminary to review here is exhausted, is not in itself sufficient to authorize our intervention." *Republic Natural Gas Co. v. Oklahoma*, *supra*, at 70.

CONCLUSION

For the foregoing reasons, respondents Harvey W. Dierksen, *et al.*, urge that the Petitions for Writs of Certiorari be denied.

Respectfully submitted,

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August 20, 1982

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[33] *Id.* at 18.

APPENDIX A

APPENDIX A

[This Appendix A reprints the eleven orders of the Corporation Commission of Oklahoma referenced in note 28 of the foregoing Brief.]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 59095

Order No. 153661

APPLICANT: A. H. FIREBAUGH and ORA M. FIREBAUGH

APPLICATION TO VACATE ORDER NO. 141045 INSOFAR AS IT CREATES SECTION 26, TOWNSHIP 20 NORTH, RANGE 15 WEST AS ONE DRILLING AND SPACING UNIT FOR THE MISSISSIPPI LIME COMMON SOURCE OF SUPPLY AND TO EXTEND ORDER NO. 143475 SO AS TO CREATE 80 ACRE DRILLING AND SPACING UNITS FOR THE MISSISSIPPI LIME COMMON SOURCE OF SUPPLY IN SECTION 26, TOWNSHIP 20 NORTH, RANGE 15 WEST, MAJOR COUNTY, OKLAHOMA.

REPORT OF THE COMMISSION

This cause came on for hearing before Harry E. Brown, Jr., Acting Trial Examiner for the Corporation Commission of the State of Oklahoma, on the 6th day of April, 1979, at 9:00 o'clock A.M., Jim Thorpe Building, Oklahoma City, Oklahoma, for the purpose of hearing, taking testimony and reporting findings and recommendations to the Commission.

Russell Thompson, James M. Peters and Joe Houk, Attorneys, appeared for the Applicants, A. H. Firebaugh and Ora M. Firebaugh; H. B. Watson, Jr., Attorney, appeared for the Respondent, Sabine Production Company; William A. Hadwiger, Attorney, appeared for Respondents, Johnnie C. Frazier and Rose Donley; and Harvey H. Cody, Conservation Attorney, appeared for the Commission. The Trial Examiner proceeded to hear the cause

and filed his report to the Commission recommending that the application be granted. Within the time permitted, exceptions were filed by Respondent, Sabine Production Company.

Arguments on the exceptions filed by Sabine Production Company were duly set for hearing before the Corporation Commission on May 9, 1979 at 10:00 o'clock A.M. On the 9th day of May, 1979, exceptions came on for hearing. H. B. Watson, Jr. appeared for Respondent, Sabine Production Company; James M. Peters and Joe Houk appeared for the Applicants; Harvey Cody, Conservation Attorney and C. Pat Allen, Assistant Conservation Attorney, appeared for the Corporation Commission, at which time the Commission heard arguments of counsel, at the conclusion of which the cause was taken under advisement. The Commission, after consideration of all the evidence and being fully advised in this cause finds that 80 acre standup units should be created by drawing a North/South center line through each governmental quarter section (with the Firebaugh 1-26 Well the designated well for the E/2 of the NW/4 of Section 26) and the effective date of the order to be April 6, 1979 and that the report of the Trial Examiner should be adopted, and the following findings and order should be issued:

FINDINGS

1. That Cause CD No. 59095 is an Application of A. H. Firebaugh and Ora M. Firebaugh requesting the Commission to vacate Order No. 141045 insofar as it created Section 26-T20N-R15W in Major County, Oklahoma, as one drilling and spacing unit for the Mississippi Lime common source of supply and to extend Order No. 143475 creating 80 acre drilling and spacing units for the Mississippi Lime common source of supply to cover and include Section 26, Township 20 North, Range 15 West in Major County, Oklahoma. Applicant's Application has recommended that the units be created by drawing an East/West center line through each governmental

quarter section with the units to be composed of the N/2 of the quarter section and the S/2 of the quarter section and with the permitted wells in the Northwest 40 acres and the Southeast 40 acres of each governmental quarter section not nearer than 330 feet to the boundary of the 40 acre tract in which the permitted well lies. Applicant's Application has recommended that the Firebaugh 1-26 Well in the center of the NW/4 of Section 26-T20N-R15W be the permitted well for the drilling and spacing unit consisting of the S/2 of the NW/4 of Section 26-T20N-R15W.

2. That notice has been given in all respects as required by law and the Rules of the Corporation Commission of the State of Oklahoma; that Applicant is an owner within the area covered by the Application; the said Commission has jurisdiction over the parties and the subject matter herein.

3. Order No. 141045 dated May 2, 1978, created a 640 acre drilling and spacing unit in subject Section 26 in the Mississippi. Gas production was expected at the time this order was entered. In July, 1978, the adjacent Section 27 to the west was spaced on 80 acre drilling and spacing units in the Mississippi. The Applicant seeks to extend the order in Section 27 and vacate the existing spacing order in Section 26, thereby creating 80 acre drilling and spacing units in Section 26.

The Respondent, Sabine Production, drilled the well in Section 26 and the well went into production in February, 1979. Sabine urged it be given time to evaluate its well before making the decision of development of the area because not enough facts were available to make prudent decisions at that time.

4. A Petroleum Consulting Engineer, George Fort, testified for the Applicant. He stated he was familiar with the area and had testified recently in CD No. 53519 wherein Section 27 was spaced on 80 acre units. He updated his previous study of the area for this hearing, but admitted he has very little available data in Section 26. The Section 26 well Firebaugh 1-26, was drilled to

a total depth of 10,120 feet to the Hunton. Tests were made in the Hunton and a cast iron bridge plug was set above the Hunton and the well was completed in the Mississippi at 9,042 feet to 9,768 feet. Initial completion from the Mississippi was 737 barrels of oil, 419 barrels of load water and 850,000 cubic feet of gas, with a G.O.R. of 1,153-1. The well suffered a decline and such is strong indication it has limited drainage area which is typical in the Mississippi in this area. His opinion was that it was definitely an oil well. That the Mississippian underlies Section 26 and it is the same common source of supply as Section 27 even though may not be interconnected. He recommended that Order No. 141045 insofar as it applied to Section 26 be vacated as to Mississippian only and that the units had been respaced in Section 27 as laydown units with the NW SE pattern, but he recommended the units be standup units in Section 26 with a NW SE pattern, and that the Firebaugh 1-26 Well be the designated well for the unit consisting of the E/2 of the NW/4 of Section 26-T20N-R15W, Major County, Oklahoma.

The change of conditions was the knowledge gained from the recent well in Section 26. That it is an oil well with limited drainage area. He recommended 80 acre drilling and spacing units be created considering the facts and the law. The witness admitted he had limited knowledge of Section 26 well. The witness had hearsay evidence about the well available to him, but did not take it into consideration when reaching his conclusions about the well. The well in Section 26 should be designated the unit well for the E/2 of the NW/4. That it is not economically prudent to develop on 640 acres.

5. Mr. Firebaugh testified he was an owner of an interest in the area covered by the Application. That he owned 80 acres of minerals in the NW/4 of Section 26 and one acre in the remaining part of the Section. That 1002A names the well an oil well. Mrs. Martin had told him the cumulative production of the well for

44 days was approximately 6,000 barrels of oil and 26,000 cubic feet of gas and the well was decreasing.

6. Mrs. Martin testified she did give the information to Firebaugh and that it was given to her by the employees of Sabine that were testifying today at a recent steak house meeting.

7. Counsel for Sabine called Elizabeth P. Richards, Petroleum Engineer, who stated she was familiar with the area and presented Exhibit 10 which shows daily production in barrels per day since turned into pipeline February 6 to April 1, a total of 54 days. The peak production was 300 barrels per day. The estimated gas is 370,000 cubic feet of gas per day and 70 barrels of oil per day. She said Mrs. Martin's figures were given to her as 6,731 barrels and approximately 26 million cubic feet of gas, but that the figure was 30,180 MCF cumulative gas through April 1st. The witness explained Exhibit 11, an economic analysis of the Firebaugh well. If the low curve is correct, Sabine will recover 45% over what it put into the well in ten years. If the high curve is correct, it will get back three times its investment. That she didn't have enough data to make an accurate projection, but she didn't think Section 26 could be economically developed on 80 acre units. She needs 6 to 8 months of production to make accurate projections.

On cross-examination, the witness impressed the Examiner with her veracity and candor. She said the Mississippi oil wells in the area start off like this one and then fall off. That there is no question, the subject well is an oil well. J. R. Thomas, Supervisor for Sabine filed the 1002-A Report and named it an oil well, and she agrees with him then, and still thinks it is an oil well now. That 640-acre spacing is not in the best interest of the owners and that spacing should be reduced. That Sabine needs more time to evaluate production data to determine if it should drill another well. That if it became economically feasible, Sabine would propose to drill additional wells on increased density. But that she had

no authority to commit Sabine for additional wells. That the well is an oil well and she doesn't see it changing.

8. Counsel for Sabine called Olin Medley, Geologist who said he was familiar with the area. He recommended the Application be dismissed and Sabine be given time to continue an exploration program in the area. Sabine needs eight months to determine if it would drill and if it didn't, it would "step out of the picture". He would have testified that gas production was expected and therefore requested 640 acre spacing for Section 26, but now, with information available, he would ask for 80-acre spacing except that Sabine needs more time to evaluate data so that it can make definite plans of development.

9. May Jane Combs, Geological Engineer with Tenneco recommended the Application be denied so that more time could be given to study gravity of Section 26 well. She has looked at logs, but hasn't made a geologic study of the area. Tenneco is not certain Section 26 well is an oil well but, if it is, it ought to be spaced on 80-acre units.

10. Mr. W. F. Campbell, owner in the area, stated the units should be standup instead of laydown.

11. Mrs. Nadine Martin stated she was in favor of 80-acre spacing.

12. Luther Nunley, an owner in the area, wants 80-acre spacing and laydown units.

ORDER

IT IS THEREFORE, ORDERED by the Corporation Commission of Oklahoma as follows:

1. That the Firebaugh No. 1-26 Well located in the NW/4 of Section 26-T20N-R15W, Major County, Oklahoma, is an oil well completed in the Mississippi Lime separate common source of supply at a depth of 9,042 to 9,761 feet below the surface.

2. That Order No. 141045 be, and the same is hereby vacated insofar as it created Section 26-T20N-R15W as

one drilling and spacing unit for the Mississippi Lime common source of supply.

3. That 80-acre drilling and spacing units are hereby created for the Mississippi Lime common source of supply of oil and gas underlying Section 26, by extending Order No. 143475. The 80-acre drilling and spacing units to be created by drawing a North-South center line through each governmental quarter section. The units to be standup 80 acres with the permitted wells to be located in the NW 40 acres and the SE 40 acres of each governmental quarter section, any place in the 40 acres not nearer than 330 feet to any unit boundary thereof.

4. That with the existing Firebaugh No. 1-26 Well located approximately in the center of the NW/4 of Section 26-T20N-R15W to be the permitted well for the drilling and spacing unit consisting of the E/2 of the NW/4 Section 26-T20N-R15W.

5. All royalty interests within the drilling and spacing unit herein created are pooled and communitized. Each royalty owner shall participate in the production from the unit well in the proportion which his mineral interest within the drilling and spacing units bears to the full mineral interest within the drilling and spacing unit.

6. Should there be any dispute between lessees concerning the development of any of the drilling and spacing units herein created, the Commission reserves jurisdiction to adjust their rights and equities as provided for in Title 52, Okla. Stat., Sec. 87.1.

7. The permitted well authorized hereby for the drilling and spacing unit established by this Order is necessary to effectively and efficiently drain the portion of the common source of supply covered by said drilling and spacing unit. This order shall alter the well spacing rules and requirements previously applicable to the common source of supply underlying each drilling and spacing unit established by this Order and superseding the provisions of O.C.C.-O.G.R. 1-501, General Well Spacing Re-

quirements, to the extent such provisions are inconsistent with this Order.

8. Attached hereto marked Exhibit "A" is a plat showing the size and shape of the drilling and spacing units herein created and the location of the permitted well within each drilling and spacing unit.

The effective date of this order is April 6, 1979.

DONE AND PERFORMED this 31 day of May, 1979.

OKLAHOMA CORPORATION COMMISSION

/s/ Hamp Baker
Chairman

/s/ Bill Dawson
Vice Chairman

_____
Commissioner

ATTEST:

/s/ Ed Overholser
ED OVERHOLSER
Secretary

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause C.D. No. 56996

Order No. 157719

IN THE MATTER OF THE APPLICATION OF BENTON F. THOMASON FOR AN ORDER ESTABLISHING PROPER DRILLING AND SPACING UNITS FOR THE DES MOINES (BIG LIME), TONKAWA, LAYTON MISSISSIPPIAN LIME, AND RED FORK SEPARATE COMMON SOURCES OF SUPPLY, BY VACATING ORDER NOS. 92891, 98259, AND 106740 (640-ACRE UNIT) AND RE-ESTABLISHING 80-ACRE UNITS IN SECTION 9, TOWNSHIP 27 NORTH, RANGE 12 W.I.M., ALFALFA COUNTY, OKLAHOMA.

REPORT OF THE COMMISSION

This cause came on for hearing before Charles C. Chastain, Trial Examiner for the Corporation Commission of Oklahoma, on the 22nd day of November, 1978, pursuant to notice given as required by law and the rules of the Commission, for the purpose of taking testimony and reporting to the Commission.

At the time said cause was heard, James V. Collins, attorney, appeared for the Applicant, Benton F. Thomason. Joe H. Lawter, President of the Farmers Union Co-Operative Royalty Co., appeared for and as representative of said company. Warren Y. Pickering, petroleum geologist, appeared for the purpose of giving expert testimony in support of the application.

The Trial Examiner heard the cause and has filed his report recommending that the application be granted. The Commission concludes that the recommendation of the Trial Examiner should be adopted and therefore finds and orders as follows:

FINDINGS

1. This is an application of Benton F. Thomason for an order vacating Order Nos. 92891, 98259 and 106740

insofar, and only insofar, as said orders established 640-acre spacing and drilling units in Section 9, Township 27 North, Range 12 W.I.M., Alfalfa County, Oklahoma, and for the production of oil, gas and gas condensate from the Des Moines (Big Lime), Oswego, Tonkawa, Layton, Mississippian Lime and Red Fork Separate Common Sources of Supply, and in lieu thereof, to establish 80-acre spacing for said formations and the establishing of appropriate well locations and exceptions thereto.

2. The Commission has jurisdiction over the subject matter herein and notice has been given in all respects as required by law and the rules of the Commission.

3. That heretofore 640-acre drilling and spacing units have been established in this area by Order Nos. 92891, 98259 and 106740 for the production of gas and gas condensate from the Des Moines (Big Lime), Oswego, Tonkawa, Layton, Mississippian Lime and Red Fork formations underlying Section 9, Township 27 North, Range 12 W.I.M., Alfalfa County, Oklahoma.

4. The applicant is an owner of minerals lying in and under said Section 9, and Farmer's Union Co-operative Royalty Company is likewise the owner of minerals underlying said section.

5. The applicant's testimony establishes that on March 3, 1977, Cummings Oil Company completed the Thomason Well No. 1-9 located at the center of the SW/4 of said Section 9 with an initial pumping rate of 6 barrels of oil per day and 2 barrels of water per day in the Red Fork zone at a perforated interval of 5204-5213 feet. Wells drilled in Sections 3, 4, 6, 8, 10, 15, and 17 of Township 27 North, Range 12 W.I.M., have all been completed as dry holes. The nearest production to the Thomason Well No. 1-9 is the Frieden Well No. 3-A completed by Ricks Exploration on August 16, 1978, for an initial flowing rate of 380 MCF per day and 80 barrels of water per day from the Oswego formation at a perforated interval from 4590-4596 feet.

6. By Order 106740 this Commission established 640-acre gas drilling and spacing units for the Des Moines (Big Lime), Oswego, Tonkawa, Layton, Mississippian Lime and Red Fork separate common sources of supply underlying lands which included Section 9, Township 27 North, Range 12 W.I.M., Alfalfa County, Oklahoma. The latter described governmental section was designated as one drilling and spacing unit as aforesaid. The permitted well for the drilling and spacing unit is the Thomason 1-9 located in the center of the SW/4 of said Section 9 which well was completed on March 22, 1977 as an oil well. Drilling activity in the area subsequent to the entry of this Commission's Order No. 106740 indicates a substantial change in knowledge of the conditions in the subject area requiring modification of the drilling and spacing unit classification for Section 9, Township 27 North, Range 12 W.I.M., Alfalfa County, Oklahoma to 80-acre oil and gas drilling and spacing units.

7. Taking into consideration all of the evidence, facts and circumstances appearing in this cause, an order should be made amending Order Nos. 92891, 98259 and 106740 by deleting therefrom Section 9, Township 27 North, Range 12 W.I.M., and establishing 80-acre drilling and spacing units in said section, forming the same by a line running North and South through the center of each respective governmental quarter-section thereof. The permitted well location for each of said 80-acre drilling and spacing units should be the NE/4 and the SW/4 of each respective governmental quarter section and should be located no closer than 330 feet to the unit boundary, except the Thomason Well No. 1-9, which should be designated as the permitted well for the W/2 of the SW/4 of said Section 9.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That Section 9, Township 27 North, Range 12 W.I.M., Alfalfa County, Oklahoma, be and the same is hereby deleted from the purview of Order Nos. 92891 and 98259 as extended by Order No. 106740, establishing 640-acre drilling and spacing units in the Des Moines (Big Lime), Oswego, Tonkawa, Layton, Mississippian Lime and Red Fork formations.

2. That 80-acre drilling and spacing units be and the same are hereby established for the production of oil, gas and gas condensate from the Des Moines (Big Lime), Oswego, Tonkawa, Layton, Mississippian Lime and Red Fork formations underlying Section 9, Township 27 North, Range 12 W.I.M., Alfalfa County, Oklahoma.

3. That said 80-acre units be formed by dividing each respective governmental quarter section in said Section 9 by a line running North and South through the center thereof, with permitted well locations in the NE/4 and the SW/4 of each respective governmental quarter section. The permitted well should be located no closer than 330 feet to the unit boundary of the 80-acre unit, except the Thomason Well No. 1-9, which is hereby designated as the permitted well for the W/2 of the SW/4 of Section 9.

4. That all royalty interests within any spacing unit shall be communitized and each royalty owner within any unit shall participate in the royalty from the well drilled thereon in the relation that the acreage owned by him bears to the total acreage in the unit.

5. That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then their rights and equities shall be adjudicated by the Commission as provided for by subsection d, Section 87.1, Title 52, Oklahoma Statutes.

DONE AND PERFORMED this 20 day of September, 1979.

ATTEST:

/s/ Ed Overholser
Secretary

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
Chairman

/s/ Bill Dawson
Vice-Chairman

/s/ Norma Eagleton
Member

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

Cause CD No. 58274

Order No. 160506

IN THE MATTER OF THE APPLICATION OF TOMMY YOUNG FOR AN ORDER AMENDING ORDER NO. 99348 AND ESTABLISHING 80-ACRE DRILLING AND SPACING UNITS FOR THE COTTAGE GROVE COMMON SOURCE OF SUPPLY UNDERLYING SECTION 31, TOWNSHIP 21 NORTH, RANGE 21 WEST, WOODWARD COUNTY, OKLAHOMA.

REPORT OF THE COMMISSION

This cause came on for hearing before Harry E. Brown, *Jr.*, Acting Trial Examiner for the Corporation Commission of Oklahoma, on the 1st day of February,

1979, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the Rules of the Commission.

Donald R. Lisle, Attorney, appeared for the Applicant, Tommy Young; John R. Robertson, Jr., Attorney, appeared for Ran Ricks, Jr., and Harvey Cody, Conservation Attorney, appeared for the Corporation Commission.

The Trial Examiner heard the cause and has filed his report recommending that the application be granted. The Commission concludes that the recommendation of the Trial Examiner should be adopted and therefore finds and orders as follows:

FINDINGS

1. This is an application of Tommy Young for an order amending Order No. 99348 by vacating such order which established Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma as a 640-acre drilling and spacing unit for the production of gas and gas condensate from the Cottage Grove common source of supply lying thereunder and thereafter for an order establishing 80-acre drilling and spacing units for the production of oil and gas from the Cottage Grove common source of supply underlying Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma.

2. The Commission has jurisdiction over the subject matter herein and notice has been given in all respects as required by the laws and Rules of the Commission and no protests have been entered to the granting of the application.

3. Applicant is the owner of an undivided ¼ interest in the minerals underlying Section 31-T21N-R21W, Woodward County, Oklahoma. Clifford W. Miller, Woodward, Oklahoma is the owner of an undivided ¾ of all of the minerals underlying Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma. Sarkeys, Inc. is the lessee of record of all minerals underlying this section and Ricks Exploration Company is the owner of a farm-out agreement from Sarkey's Inc.

4. By Order No. 99348, dated August 16, 1978, upon application of R. P. Lammerts, the Corporation Commission established Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma, along with other lands not here involved, as a 640-acre drilling and spacing unit for the production of gas and gas condensate from the Tonkawa, Cottage Grove, Big Lime, Oswego, Cherokee, Morrow, and Chester common sources of supply lying thereunder.

The Cottage Grove common source of supply underlies Section 31 at approximately 7600 feet and produces predominately oil rather than gas. On or about February 19, 1977, Sarkey's, Inc. completed an oil well in the Cottage Grove Sand in the W/2 of the W/2 of the E/2 of the SW/4 of Section 31 at a depth of 7616 to 7630 feet producing approximately 95 barrels of oil daily. Said well, as of the time of this hearing, was still on production.

Applicant alleges that the Cottage Grove common source of supply underlying this section has been determined, by actual drilling, to be an oil common source of supply as opposed to a gas common source of supply. Therefore, Applicant recommends that Order No. 99348 be vacated and thereafter the Commission establish 80-acre drilling and spacing units for the production of oil and gas from the said Cottage Grove common source of supply.

5. Applicant testified that one well can efficiently drain the recoverable oil and gas from the Cottage Grove common source of supply underlying an area of 80-acres. Applicant testified that the costs of a dry hole to the Cottage Grove common source of supply would be approximately $217,020.00 and the costs of drilling, completing and equipping a producing well through the Cottage Grove common source of supply would be approximately $381,671.00. Applicant testified that in the event a well was drilled to the Cottage Grove common source of supply and encountered production, such production

would be oil and gas rather than gas and gas condensate; that one well drilled to the Cottage Grove common source of supply encountering oil and gas would be sufficient to allow recovery of all or substantially all of the recoverable hydrocarbons underlying a 80-acre drilling and spacing unit; and, considering the nature of the anticipated production, the drainage area, the estimated costs of drilling, completing and equipping wells and considering the obligation to the royalty owners, it would be uneconomical to drill a well to the above named common source of supply at a density greater than 80-acres. Accordingly, Applicant recommends that 80-acre drilling and spacing units be established for the Cottage Grove common source of supply underlying the lands described in the caption hereof.

Applicant further testified that the Cottage Grove is spaced on 80-acres (predominately oil) underlying Sections 27, 28, and 29, Township 21 North, Range 21 West, Woodward County, Oklahoma pursuant to Order No. 132615 dated July 20, 1977. Applicant testified that this order should be extended to include all of Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma for the reason that the Cottage Grove common source of supply underlying Sections 27, 28, and 29, Township 21 North, Range 21 West, Woodward County, Oklahoma is one and the same accumulation of hydrocarbons in the Cottage Grove common source of supply as was found under Section 31-21N-21W, Woodward County, Oklahoma.

6. One well in each drilling and spacing (proration) unit established by this Order is necessary to effectively and efficiently drain the portion of the Cottage Grove common source of supply (reservoir) covered by each such drilling and spacing (proration) unit, there being no existing well within each such drilling and spacing (proration) unit which can effectively and efficiently drain the portion of such common source of supply (reservoir) covered by each such drilling and spacing unit.

This Order shall alter the well spacing rules and requirements previously applicable to the above named common source of supply underlying Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma, by superseding the provisions of O.C.C.-O.G.R. 1-501, General Well Spacing Requirements, to the extent such provisions are inconsistent with this Order.

7. Any well hereafter drilled within the surface area of the affected lands which is completed as a producing well in any reservior for which no drilling and spacing unit has been established that includes the lands on which such well is located, and which may therefore be considered to be within a *de facto* proration unit by virtue of O.C.C.-O.G.R. 1-501, General Well Spacing Requirements, is necessary to effectively and efficiently drain a portion of the reservoir covered by such *de facto* proration unit which cannot be effectively and efficiently drained by any other existing well within such *de facto* proration unit which has been drilled prior to the date of the hearing in this cause. The boundaries of any such previously existing *de facto* proration unit are hereby redefined by redesignating and confirming any such *de facto* proration unit.

8. In the interest of securing the greatest ultimate recovery from the reservoir, the prevention of waste and the protection of correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. Order No. 99348 dated August 16, 1978, which established Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma as a 640-acre drilling and spacing unit for the production of gas and gas condensate from the Cottage Grove common source of supply underlying Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma is hereby vacated. This

vacation is not applicable to and in no wise affects the Tonkawa, Big Lime, Oswego, Cherokee, Morrow and Chester common sources of supply underlying Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma, which were also spaced by Order No. 99348 as this application and notice and Order affects only the Cottage Grove common source of supply underlying said Section 31-21N-21W, Woodward County, Oklahoma.

2. The area covered by Order No. 132615 is hereby enlarged so that 80-acre drilling and spacing units are established for the Cottage Grove common source of supply underlying all of Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma.

2. Said 80-acre drilling and spacing units shall be established by drawing a north-south line through the center of each governmental quarter section within the area sought to be spaced, creating an east and west 80-acre unit within each governmental quarter section, with the permitted 40-acre tracts upon which a well may be located to be the Southeast 40 acres and the Northwest 40 acres of each governmental quarter section. Within such applicable 40-acre tracts within each governmental quarter section, the permitted well shall be in the center thereof; provided, however, a well will be deemed drilled at the permitted location if drilled anywhere in an applicable 40-acre tract not closer than 330 feet from the boundary of such 40-acre tract. Provided, however, the permitted unit well for the drilling and spacing unit consisting of the E/2 of the SW/4 of Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma shall be the Sarkey's, Inc. Well located in the approximate center of the W/2 of the W/2 of the E/2 of the SW/4 and any other well heretofore drilled to and now producing from the Cottage Grove common source of supply shall be the designated well for the 80-acre unit upon which such well, at the date of this Order, is located.

3. One well in each drilling and spacing (proration) unit established by this Order is necessary to effectively and efficiently drain the portion of the Cottage Grove common source of supply (reservoir) covered by each such drilling and spacing (proration) unit, there being no existing well within each such drilling and spacing (proration) unit which can effectively and efficiently drain the portion of such common source of supply (reservoir) covered by each such drilling and spacing unit. This Order shall alter the well spacing rules and requirements previously applicable to the above named common source of supply underlying Section 31, Township 21 North, Range 21 West, Woodward County, Oklahoma, by superseding the provisions of O.C.C.-O.G.R. 1-501, General Well Spacing Requirements, to the extent such provisions are inconsistent with this Order.

4. Any well hereafter drilled within the surface area of the affected lands which is completed as a producing well in any reservoir for which no drilling and spacing unit has been established that includes the lands on which such well is located, and which may therefore be considered to be within a *de facto* proration unit by virtue of O.C.C.-O.G.R. 1-501, General Well Spacing Requirements, is necessary to effectively and efficiently drain a portion of the reservoir covered by such *de facto* proration unit which cannot be effectively and efficiently drained by any other existing well within such *de facto* proration unit which has been drilled prior to the date of the hearing in this cause. The boundaries of any such previously existing *de facto* proration unit are hereby redefined by redesignating and confirming any such *de facto* proration unit.

5. A map shall be attached hereto and marked Exhibit A and made a part hereof, showing the outline of drilling and spacing unit and the location of the permitted well in the unit.

6. All royalty interests within each drilling and spacing unit shall be communitized and each royalty owner

within each unit shall participate in the royalty in the well drilled thereon, in the relation that the acreage owned by him bears to the total acreage in each unit.

7. In the event there are divided or undivided interests within the units and the parties are unable to agree on a plan for the development of the units, then their rights and equities shall be adjudicated by the Commission as provided by Title 52, Oklahoma Statutes, 1971, Section 87.1(e).

DONE AND PERFORMED this 21 day of November, 1979.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
HAMP BAKER
Chairman

/s/ Bill Dawson
BILL DAWSON
Vice Chairman

/s/ Norma Eagleton
NORMA EAGLETON
Commissioner

ATTEST:

/s/ Berdee S. Holt
Acting Secretary

[SEAL]

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 63674

Order No. 162782

Applicants: M.C. EMMONS and RUTH EMMONS

Nature of Cause: TO AMEND PRIOR SPACING ORDERS; TO DELETE CERTAIN TONKAWA SPACING; TO ESTABLISH 80-ACRE TONKAWA SPACING;

Land Covered: SECTION SIX IN TOWNSHIP SIXTEEN NORTH, RANGE NINETEEN WEST, DEWEY COUNTY, OKLAHOMA

REPORT OF THE COMMISSION

This cause came on for hearing before Charles Helm, Acting Trial Examiner for the Corporation Commission of the State of Oklahoma on the 7th day of November, 1979, at 9:00 o'clock a.m., in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, for the purpose of taking testimony and reporting to the Commission.

Harvey L. Harmon, Jr., Attorney, appeared for the Applicants, M.C. Emmons and Ruth Emmons, Roy Graybill appeared pro se, and Harvey Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the cause and has filed his Report recommending that the Application be granted which Report and recommendation are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is an Application of M.C. Emmons and Ruth Emmons for an Order to amend prior spacing Order No. 61184 extended into the captioned lands by Order No. 66418 by reforming the 640-acre Tonkawa spac-

ing in the captioned lands and into 80-acre predominantly oil Tonkawa spacing in Section 6 in Township 16 North, Range 19 West, Dewey County, Oklahoma.

2. That the Commission has jurisdiction over the subject matter therein; that notice has been given in all respects as required by law and no protests have been entered to the granting of this Application.

3. That the Applicants are the owners of oil and gas leases in the above described area. That the above described lands overlie the Tonkawa formation.

4. That the present well located in the NE/4 of Section 6, Township 16 North, Range 19 West, Dewey County, Oklahoma, was completed March 25, 1978, from the Tonkawa for 28 barrels of oil with 27 barrels of load water and 50 MCF of gas through a ¾" choke. The gas/oil ratio was 1,786 to 1 over all perforations from 7,919 feet to 7,945. Cummulative production to July 1, 1979 was 3,509 barrels of oil. Production for the first half of 1979 was 996 barrels of oil which is 166 barrels of oil per month or 5.5 barrels of oil per day.

5. That the production history and information from the existing well and the testimony show the Tonkawa to be a combination reservoir with an oil phase underlying the captioned lands.

6. That it is the testimony that one well will adequately drain all the economically recoverable hydrocarbons for each 80-acre precominantly [sic] oil drilling and spacing unit and that it is not economically feasible to drill wells on a pattern larger than 80 acres.

7. That an Order should be made establishing that the 80-acre predominantly oil drilling and spacing units for the production of oil and gas from the Tonkawa formation underlying the lands described in the caption hereof should be comprised of the E/2 of the W/2 of said governmental Quarter Section with the permitted well for each unit to be in the location permitted by Rule 1-504 of the Rules of the Corporation Commission of Oklahoma with the exception of the existing well.

8. That in the interest of securing the greatest ultimate recovery of oil and gas from the various pools, the prevention of waste and the protection of correlative rights, this Application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That Order No. 61184 creating 640-acre drilling and spacing units for production from the Tonkawa formation as extended into the captioned lands by Order No. 66418 be and the same is hereby amended and that Section 6, Township 16 North, Range 19 West, Dewey County, Oklahoma, be and the same is hereby reformed into 80-acre predominantly oil drilling and spacing units for production from the Tonkawa formation.

2. That the 80-acre drilling and spacing units hereinabove mentioned shall be formed by dividing each governmental Quarter Section by a line running north and south through the center thereof, with the permitted well location being in the Northwest and Southeast 40 acres of each governmental Quarter Section at least 330 feet from the boundary line of the respective 40-acre tracts, with the exception of the existing well located in the NE/4 of Section 6-16N-19W which shall be the designated well for the 80-acre unit comprised of the W/2 of the NE/4 for so long as oil or gas is produced in paying quantities therefrom. Should said well be plugged or abandoned, the legal location shall revert to the standard location as provided by Rule 1-504.

3. That a map be attached hereto marked Exhibit A and made a part hereof showing the outline of the area spaced herein, the size and shape of the drilling units and the location of the permitted well on each unit.

4. That all royalty interests within any spacing unit shall be communitized and each royalty owner within any unit shall participate in the royalty from the well drilled

thereon and the relation that the acreage owned by him bears to the total acreage in the unit.

5. That in the event there are divided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then the rights and equities shall be adjudicated by the Commission, as provided for by Subsection D, Section 87.1, Title 52, 1971 O.S.A.

6. That this Order shall be effective as of the 7th day of November, 1979.

DONE AND PERFORMED this 16th day of January, 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
Chairman

/s/ Bill Dawson
Vice Chairman

/s/ Norma Eagleton
Member

ATTEST:

/s/ Berdee S. Holt
Act. Secretary

[SEAL]

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

CD No. 64529

Order No. 163551

APPLICANT: Bob R. Fast

IN THE MATTER OF DELETING SECTION 6, TOWNSHIP 20 NORTH, RANGE 12, W.I.M., MAJOR COUNTY, OKLAHOMA, FROM THE PROVISIONS OF ORDER NO. 121748 CREATING DRILLING AND SPACING UNITS FOR THE PRODUCTION OF GAS AND GAS CONDENSATE FROM THE MISSISSIPPIAN FORMATION, AND TO CREATE 80-ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL FROM THE MISSISSIPPIAN FORMATION UNDERLYING SECTION 6, TOWNSHIP 20 NORTH, RANGE 12, W.I.M., MAJOR COUNTY, OKLAHOMA

REPORT OF THE COMMISSION

This Cause came on for hearing before Will Fogels, Acting Trial Examiner for the Corporation Commission of the State of Oklahoma, on the 6th day of December, 1979, at 9:00 A.M., Jim Thorpe Building, Oklahoma City, Oklahoma, for the purpose of hearing, taking testimony, and reporting findings and recommendations to the Commission.

Tom Hieronymus, Attorney, appeared for the Applicant, Bob R. Fast; and Harvey H. Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the cause and has filed his report recommending that the Application be granted, which report and recommendation are hereby adopted, and the Commission, therefore, finds as follows:

FINDINGS

1. That this is the Application of Bob R. Fast for an order deleting Section Six (6), Township Twenty (20)

North, Range Twelve (12), W.I.M., Major County, Oklahoma, from the purview of Order No. 121748, which created 640-acre Mississippian gas and gas condensate spacing and drilling units, and to establish 80-acre Mississippian drilling and spacing units for all of said Section Six (6). At the time of the hearing Mississippian was amended to Mississippi Solid.

2. That the Commission has jurisdiction over the subject matter herein and that notice has been given in all respects as required by law and the Rules of the Commission, and no protests have been entered to the granting of the Application.

3. That heretofore, the Commission, by Order No. 121748, created a 640-acre drilling and spacing unit for the production of gas and gas condensate from the Mississippi Solid Common Source of Supply underlying Section 6, Township 20 North, Range 12, W.I.M., Major County, Oklahoma.

4. George E. Fort, a consulting engineer testifying for the Applicant, stated that the present well located in the Northeast Quarter of said Section 6 is producing from the Mississippi Solid formation from 8125 feet to 8490 feet. The well went on production in September 1976, and up to July 1, 1979, had produced 10,820 barrels of oil. The well was completed on September 21, 1976, for 40 barrels of oil, and 90 barrels of load water in 12 hours open choke with a flowing pressure of 20 pounds. The well is now on the pump and for the first half of 1979, it averaged approximately 7.4 barrels of oil per day; that it is an oil well; that it is a combination reservoir; that the oil portion of the reservoir underlies said Section 6 and is a separate common source of supply productive of oil from the Mississippi Solid formation.

5. That the evidence further shows by the discovery of oil in Section 6 is a substantial change of condition from that found to exist at the time Order No. 121748 was entered.

6. That Section 6, Township 20 North, Range 12, W.I.M., Major County, Oklahoma, should be deleted from

Order No. 121748 creating 640-acre units for the production of gas and gas condensate from the Mississippi Solid common source of supply and that said order be amended by establishing 80-acre drilling and spacing units for the production of oil from the Mississippi Solid common source of supply under Section 6, Township 20 North, Range 12, W.I.M., Major County, Oklahoma.

7. That in the interest of securing the greatest ultimate recovery from the pool, the prevention of waste and the protection of correlative rights, this Application should be granted.

ORDER

IT IS, THEREFORE, ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That Order No. 121748, which established Section Six (6), Township Twenty (20) North, Range Twelve (12), W.I.M., Major County, Oklahoma, as a 640-acre drilling and spacing unit for the production of gas and gas condensate from the Mississippi Solid formation, is amended by forming 80-acre drilling and spacing units for the production of oil and gas from the Mississippi Solid formation underlying Section 6, Township 20 North, Range 12, W.I.M., Major County, Oklahoma.

2. That 80-acre drilling and spacing units are formed by an east and west line through the centers of the governmental quarter sections and the permitted well shall be located in the Northeast and the Southwest 40 acres of the governmental quarter sections at a point therein not closer than 330 feet of the boundary of the governmental quarter section.

3. That the well now located in the NE/4 of said Section 6 is designated as the unit well for the unit which comprises the N/2 NE/4 of Section 6, Township 20 North, Range 12, W.I.M., Major County, Oklahoma, and an exception to this Order is made for said well.

4. Attached hereto, marked Exhibit A and made a part hereof, is a map which shows the location and

boundaries of the 80-acre drilling and spacing units and the location of the permitted well in each of said units.

5. All royalty interests within any drilling and spacing unit shall be communitized and each royalty owner within any such drilling and spacing unit shall participate in 1/8th of all production from any well drilled thereon in the proportion that the acreage owned by any such royalty owner within such drilling and spacing unit bears to the entire acreage in such drilling and spacing unit.

6. In the event there are divided or undivided interests within any drilling and spacing units and the parties are unable to agree on a plan for the development of the drilling and spacing unit, then their rights and equities shall be adjudicated by the Commission as provided for by Title 52, O.S.A. Section 87.1.

DONE AND PERFORMED this 29 day of January, 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
HAMP BAKER
Chairman

/s/ Bill Dawson
BILL DAWSON
Vice-Chairman

/s/ Norma Eagleton
NORMA EAGLETON
Member

ATTEST:

/s/ Berdee S. Holt
Act. Secretary

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 66407

Order No. 165682

IN THE MATTER OF THE APPLICATION OF MAJOR OIL COMPANY FOR AN ORDER DELETING 640-ACRE CHEROKEE SAND SPACING COVERING SECS. 4 AND 9-21-N-9W, MAJOR COUNTY, OKLAHOMA, AND FOR AN ORDER REINSTATING 80-ACRE RED FORK SPACING COVERING SEC. 9; FOR AN ORDER DELETING 640-ACRE MISSISSIPPIAN SPACING COVERING SEC. 4; AND FOR AN ORDER EXTENDING 80-ACRE RED FORK, MISSISSIPPI LIME, MANNING, MISENER AND HUNTON SPACING TO COVER SEC. 4.

REPORT OF THE COMMISSION

This cause came on for hearing before Charles Davis, Acting Trial Examiner for the Corporation Commission of Oklahoma, on the 22nd day of February, 1980, at 9:00 A.M., in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission, for the purpose of taking testimony and reporting to the Commission.

Harry C. Marberry, Attorney, appeared for the Applicant, Major Oil Company; and Harvey Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the cause and has filed his report recommending that the application be granted, which report and recommendation are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is the application of Major Oil Company for an order deleting 640-acre Cherokee Sand spacing covering Sections 4 and 9-21N-9W, Major County, Oklahoma, and for an order extending 80-acre Red Fork spac-

ing to cover said sections and for an order deleting 640-acre Mississippian spacing covering Section 4 and for an order extending 80-acre Mississippi Lime, Manning, Misener and Hunton spacing to cover Section 4.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and the rules of the Commission, and no protests have been entered to the granting of the application. That the Applicant owns an interest in the area to be spaced.

3. That Applicant has drilled a well in the NE/4 SW/4 of Section 4 and said well appears to be productive of oil in the Red Fork formation; that the Corporation Commission has heretofore established 640-acre Cherokee Sand spacing covering Sections 4 and 9-21N-9W, Major County, Oklahoma, by Order No. 36564; an effort has been made to extend 80-acre Red Fork spacing to cover Section 9, but that order may be invalid for the reason that the spacing was 640-acre Cherokee spacing at the time it was entered. From the drilling of said well, it appears that Sections 4 and 9 will be underlain by Red Fork oil rather than Cherokee gas and the Commission is requested to delete 640-acre Cherokee spacing covering said sections and to extend 80-acre Red Fork spacing from an adjacent section to cover said lands.

4. That said well also has encountered the Mississippi Lime formation, which formation is spaced for 640-acre gas spacing by Order No. 49133 in Section 4, but is spaced for 80-acre Mississippi Lime spacing by Order No. 75566, in Section 9. That the drilling of said well shows that the Mississippi Lime formation will be primarily productive of oil underlying Section 4 and the Commission is requested to delete 640-acre Mississippian gas spacing covering Section 4 and to extend 80-acre Mississippi Lime spacing to cover said Section 4.

5. That said well has also encountered the Misener, Manning, Hunton and Red Fork formations and it is the testimony on behalf of Applicant that 80-acre spacing has been established for said formations in an ad-

jacent area by Order No. 75566 and that said formations extend to and cover all or substantially all of Section 4-21N-9W, Major County, Oklahoma; that the above formations wil [sic] be primarily productive of oil and gas and that one well will drain the recoverable hydrocarbons from under an 80-acre unit, and the Commission is requested to extend said order so as to cover said Section 4.

6. That one well will adequately and efficiently drain the recoverable hydrocarbons in said common sources of supply underlying at least 80 acres; and 80-acre drilling and spacing units, taking into account the development costs and the anticipated recoverable reserves, are the minimum-sized units for the economic and efficient development of said common sources of supply.

7. One well in each drilling and spacing (proration) unit established by this Order is necessary to effectively and efficiently drain the portion of the common sources of supply (reservoirs) covered by each such drilling and spacing (proration) unit, there being no existing well within any such drilling and spacing (proration) unit, which can effectively and efficiently drain the portion of such common sources of supply (reservoirs) covered by such drilling and spacing (proration) unit.

8. That in the interest of encouraging development in the area, securing the greatest ultimate recovery from the pool, the prevention of waste, and the protection of correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma, as follows:

1. That Order No. 36564 establishing 640-acre drilling and spacing units for the production of gas and gas condensate from the Cherokee Sand formation is hereby amended to delete therefrom Sections 4 and 9-21N-9W, Major County, Oklahoma.

2. The Order No. 49133 establishing 640-acre drilling and spacing units for the production of gas and gas condensate from the Mississippian formation, is hereby amended to delete therefrom all of Section 4-21N-9W, Major County, Oklahoma.

3. That Order No. 75566 establishing 80-acre drilling and spacing units for the production of oil and gas from the Red Fork formation, is hereby extended to cover Sections 4 and 9-21N-9W, Major County, Oklahoma.

4. That Order No. 75566 establishing 80-acre drilling and spacing units for the production of oil and gas from the Mississippi Lime, Manning, Misener and Hunton formations, is hereby extended to cover Section 4-21N-9W, Major County, Oklahoma.

5. That 80-acre drilling and spacing units shall be established by a line running North and South through the center of each quarter section, with the permitted wells to be located in the Northeast 40 acres and in the Southwest 40 acres at any point no closer than 330 feet from the outside boundary line of said quarter section.

6. The permitted well authorized hereby for each drilling and spacing (proration) unit established by this Order is necessary to effectively and efficiently drain the portion of the common sources of supply (reservoirs) covered by each such drilling and spacing (proration) unit, there being no existing well within the area of extension covered by this Order. This Order shall alter the well spacing rules and requirements previously applicable to the common sources of supply (reservoirs) underlying each drilling and spacing (proration) unit established by this Order by superseding the provisions of O.C.C.-O.G.R. 1-501, General Well Spacing Requirements, to the extent such provisions are inconsistent with this Order.

7. That a map is attached hereto marked Exhibit "A" and made a part hereof showing the outline of the area spaced herein, the size and shape of the drilling units and the location of the permitted well in each unit.

8. That all royalty interests within any spacing unit shall be communitized and each royalty owner within any unit shall participate in the royalty from the well drilled thereon in the relation that the acreage owned by him bears to the total acreage in the unit.

9. That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then their rights and equities shall be adjudicated by the Commission as provided for by subsection e, Sec. 87.1, Title 52, 1977 O.S.A.

DONE AND PERFORMED THIS 12 DAY OF MARCH, 1980, BUT EFFECTIVE AS OF THE 22ND DAY OF FEBRUARY, 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
HAMP BAKER
Chairman

/s/ Bill Dawson
BILL DAWSON
Vice-Chairman

/s/ Norma Eagleton
NORMA EAGLETON
Commissioner

ATTEST:

/s/ Berdee S. Holt
Act. Secretary

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 65659

Order No. 165957

IN THE MATTER OF THE APPLICATION OF REPUBLIC GAS GATHERING SYSTEMS, INC., FOR AN ORDER AMENDING ORDER NO. 56676, WHICH ESTABLISHED 640-ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF NATURAL GAS AND NATURAL GAS CONDENSATE FROM THE MISSISSIPPI LIME (MERAMEC) COMMON SOURCE OF SUPPLY WITHIN THIS AREA BY DELETING THEREFROM SECTION 15, TOWNSHIP 22 NORTH, RANGE 10 WEST, MAJOR COUNTY, OKLAHOMA, AND FOR AN ORDER EXTENDING ORDER NO. 56660, AS AMENDED AND EXTENDED, WHICH ESTABLISHED 80-ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL AND GAS FROM THE MISSISSIPPI LIME COMMON SOURCE OF SUPPLY WITHIN THIS AREA SO AS TO INCLUDE SECTION 15, TOWNSHIP 22 NORTH, RANGE 10 WEST, MAJOR COUNTY, OKLAHOMA

REPORT OF THE COMMISSION

This cause came on for hearing before Carl Nelson, Trial Examiner for the Corporation Commission of Oklahoma, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, on the 11th day of January, 1980, at 9:00 a.m., pursuant to notice given as required by law and the rules of the Commission, for the purpose of taking testimony and reporting to the Commission.

John C. Buckingham, attorney, appeared for the applicant, Republic Gas Gathering Systems, Inc.; and Harvey H. Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the cause and has filed his report recommending that the application be granted,

which report and recommendation are hereby adopted, and the Commission therefore finds as follows:

FINDINGS

1. That this is an application of Republic Gas Gathering Systems, Inc. for an order to amend Order No. 56676, which established 640-acre drilling and spacing units for the production of natural gas and natural gas condensate from the Mississippi Lime (Meramec) common source of supply within this area by deleting therefrom Section 15, Township 22 North, Range 10 West, Major County, Oklahoma, and for an Order extending Order No. 56660, as amended and extended, which established 80-acre drilling and spacing units for the production of oil and gas from the Mississippi Lime common source of supply within this area so as to include Section 15, Township 22 North, Range 10 West, Major County, Oklahoma.

2. That the Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that no protests have been entered to the granting of the application.

3. That heretofore by Order No. 56676 the Corporation Commission has established 640-acre drilling and spacing units for the production of natural gas and natural gas condensate from the Mississippi Lime (Meramec) common source of supply within this area and said Section 15-22N-10W, Major County, Oklahoma, is one of such drilling and spacing units.

4. That heretofore the Corporation Commission of Oklahoma has established 80-acre drilling and spacing units by Order No. 56660 for the production of oil and gas from the Mississippi Lime common source of supply underlying among other lands Section 10, Township 22 North, Range 10 West, Major County, Oklahoma, adjacent and contiguous to said Section 15-22N-10W on the North.

5. That the applicant has drilled a well in the SW/4 of the SW/4 of Section 15-22N-10W and that said well

has been completed as an oil well from the Mississippi Lime formation; that it is the applicant's testimony that by drilling said well a change in conditions and/or knowledge of conditions of the Mississippi Lime reservoir as encountered within Section 15 has resulted and that it is the geological and engineering interpretation of said formation that the Mississippi Lime as encountered within Section 15 is an oil reservoir and is in fact an extension of the Mississippi Lime oil reservoir as spaced by Order No. 56660.

6. That it is the geological and engineering evidence of the applicant that said Order No. 56676 which established 640-acre drilling and spacing units for the production of natural gas and natural gas condensate from the Mississippi Lime (Meramec) common source of supply within this area and said Section 15-22N-10W, Major County, Oklahoma and that by Order No. 56660 which established 80-acre drilling and spacing units for the production of oil and gas from the Mississippi Lime common source of supply underlying among other lands Section 10-22N-10W, Major County, Oklahoma, adjacent and contiguous to said Section 15-22N-10W on the North should be extended so as to include said Section 15-22N-10W, Major County, Oklahoma.

7. The applicant has requested that said Order become effective as of January 11, 1980.

8. That in the interest of securing the greatest ultimate recovery of petroleum hydrocarbons from said reservoirs, the prevention of waste and the protection of correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma, as follows:

1. That Order No. 56676 which established 640-acre drilling and spacing units for the production of natural gas and natural gas condensate from the Mississippi Lime

(Meramec) common source of supply within this area and said Section 15-22N-10W, Major County, Oklahoma, be and the same is hereby amended by deleting therefrom Section 15-22N-10W, Major County, Oklahoma.

2. That Order No. 56660 which established 80-acre drilling and spacing units for the production of oil and gas from the Mississippi Lime common source of supply underlying among other lands Section 10-22N-10W, Major County, Oklahoma, adjacent and contiguous to said Section 15-22N-10W, on the North, as amended and extended be and the same is hereby further extended so as to include Section 15-22N-10W, Major County, Oklahoma.

3. That said 80-acre drilling and spacing units shall be formed by dividing each governmental quarter section into two (2) rectangular units by a line running North and South through the center thereof and that the permitted lines shall be located not closer than 330 feet from the boundary line of the NE/40-acres and the SW/40-acres of each governmental quarter section.

4. That a map be attached hereto, marked Exhibit "A", and made a part hereof showing the outline of the area spaced herein, the size and shape of the drilling units, and the location of the permitted well within each unit.

5. That all royalty interests within any spacing unit shall be communitized and each royalty owner within any unit shall participate in the royalty from the well drilled thereon in the relation that the acreage owned by him bears to the total acreage in the unit.

6. That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then their rights and equities shall be adjudicated by the Commission as provided for by subsection d, Section 87.1, Title 52, 1971 O.S.A.

7. That this Order be and the same is hereby made effective as of 11th day of January, 1980.

DONE AND PERFORMED this 18 day of March, 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
Chairman

/s/ Bill Dawson
Vice Chairman

/s/ Norma Eagleton
Commissioner

ATTEST:

/s/ Berdee S. Holt
Act. Secretary

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

CD No. 54411

Order No. 166388

APPLICANTS: Ervan V. Groene and
Charlie L. Sholtes

IN THE MATTER OF DELETING SECTION 31, TOWNSHIP 20 NORTH, RANGE 13, W.I.M., MAJOR AND BLAINE COUNTIES, OKLAHOMA, FROM THE PROVISIONS OF ORDER NO. 87492 CREATING DRILLING AND SPACING UNITS FOR THE PRODUCTION OF GAS AND GAS CONDENSATE FROM THE MISSISSIPPIAN FORMATION, AND TO CREATE 80-ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL FROM THE MISSISSIPPIAN FORMATION UNDERLYING SECTION 31, TOWNSHIP 20 NORTH, RANGE 13, W.I.M., MAJOR AND BLAINE COUNTIES, OKLAHOMA.

REPORT OF THE COMMISSION

This cause came on for hearing before Harry E. Brown, Jr., Acting Trial Examiner for the Corporation

Commission of the State of Oklahoma, on the 7th day of March, 1980, for the purpose of further hearing, taking additional testimony, and reporting further findings and recommendations to the Commission.

Tom Hieronymus, Attorney appeared for the Applicants; John Robertson, Jr. appeared for Ran Ricks, Jr. and Ricks Exploration Company; and Harvey H. Cody, Conservation Attorney, appeared for the Commission.

This cause was heard by Charles C. Chastain, Acting Trial Examiner, on October 20, 1978, and his report was filed recommending further tests be conducted on the well and that a further hearing be held one year from October 20, 1978, for final recommendations, which said hearing was continued from time to time until March 7, 1980; and Harry E. Brown, Jr., Acting Trial Examiner, upon further hearing of the cause, filed his final report recommending that the application be granted, which report and recommendations are hereby adopted, and the Commission, therefore, finds as follows:

FINDINGS

1. All findings contained in Order No. 150970 of Cause CD No. 54411 are hereby adopted and considered a part of these findings.

2. At this hearing it was established that the formation that is producing is the Mississippi Solid (Mississippi Lime), that being the formation that was spaced in Order No. 87492, and the Application was amended by substituting Mississippi Solid (Mississippi Lime) for Mississippian.

3. The reports of Ran Ricks, Jr. and Ricks Exploration Company and production records for November and December, 1979, disclose that the production is predominantly oil; that it is a combination reservoir; that the oil portion of the reservoir underlies said Section 31 and is a separate common source of supply productive of oil from the Mississippi Solid formation.

4. That Section 31-20N-13W, Major County, Oklahoma, should be deleted from Order No. 87492 creating 640-acre units for the production of gas and gas condensate from the Mississippi Solid (Mississippi Lime) Common Source of Supply and that said order be amended by establishing 80-acre drilling and spacing units for the production of oil from the Mississippi Solid Common Source of Supply under Section 31-20N-13W, Major and Blaine Counties, Oklahoma.

5. That in the interest of securing the greatest ultimate recovery from the pool, the prevention of waste and the protection of correlative rights, this Application should be granted.

ORDER

IT IS, THEREFORE, ORDERED by the Corporation Commission of the State of Oklahoma, as follows:

1. That Order No. 87492, which established Section Thirty-one (31), Township Twenty (20) North, Range Thirteen (13), W.I.M., Major County, Oklahoma, as a 640-acre drilling and spacing unit for the production of gas and gas condensate from the Mississippi Solid (Mississippi Lime) formation, is amended by forming 80-acre drilling and spacing units for the production of oil and gas from the Mississippi Solid formation underlying Section 31-20N-13W, Major County, Oklahoma.

2. That 80-acre drilling and spacing units are formed by an east and west line through the centers of the governmental quarter sections and the permitted well shall be located in the Northeast and the Southwest 40 acres of the governmental quarter sections at a point therein not closer than 330 feet of the boundary of the governmental quarter section.

3. That the well now located in the SE/4 of said Section 31 is designated as the unit well for the unit which comprises the N/2 NE/4 of Section 31, Township 20 North, Range 13, W.I.M., Major and Blaine Counties, Oklahoma, and an exception to this Order is made for said well.

4. Attached hereto, marked Exhibit A and made a part hereof, is a map which shows the location and boundaries of the 80-acre drilling and spacing units and the location of the permitted well in each of said units.

5. All royalty interests within any drilling and spacing unit shall be communitized and each royalty owner within any such drilling and spacing unit shall participate in 1/8th of all production from any well drilled thereon in the proportion that the acreage owned by any such royalty owner within such drilling and spacing unit bears to the entire acreage in such drilling and spacing unit.

6. In the event there are divided or undivided interests within any drilling and spacing units and the parties are unable to agree on a plan for the development of the drilling and spacing unit, then their rights and equities shall be adjudicated by the Commission as provided for by Title 52, O.S.A. Section 87.1.

DONE AND PERFORMED THIS 25 day of March, 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
HAMP BAKER
Chairman

/s/ Bill Dawson
BILL DAWSON
Vice Chairman

/s/ Norma Eagleton
NORMA EAGLETON
Member

ATTEST:

/s/ Berdee S. Holt
Act. Secretary

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 76472

Order No. 187298

IN THE MATTER OF THE APPLICATION OF MACK OIL CO. FOR AN ORDER AMENDING ORDER NO. 161457 WHICH ESTABLISHED 640 ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF GAS AND GAS CONDENSATE FROM THE MISSISSIPPI LIME COMMON SOURCE OF SUPPLY BY DELETING SECTION 23, TOWNSHIP 22 NORTH, RANGE 3 WEST, GARFIELD COUNTY, OKLAHOMA FROM THE PURVIEW THEREOF, AND FOR AN ORDER ESTABLISHING 80 ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL AND GAS FROM THE MISSISSIPPI LIME COMMON SOURCE OF SUPPLY UNDERLYING SECTION 23, TOWNSHIP 22 NORTH, RANGE 3 WEST, GARFIELD COUNTY, OKLAHOMA.

REPORT OF COMMISSION

This cause came on for hearing before Mr. Bob Goldfield, Trial Examiner for the Corporation Commission of Oklahoma, on the 17th day of March, 1981 at 9:00 o'clock a.m. in the Commissioner's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given, as required by law and the rules of the Commission, for the purpose of taking testimony and reporting to the Commission, the same having been continued from March 11, 1981.

Henry C. Bonney, attorney, appeared for the applicant, MACK OIL CO., Mr. H. A. Linn appeared for Fred Pfeiffer, Mr. Loren W. Wehrenberg appeared pro se, and Alice Mitchell, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the cause and has filed his report recommending that the application be granted, which report and recommendation are hereby adopted and the Commisison, therefore, finds as follows:

FINDINGS

1. That this is the application of MACK OIL CO. for an order amending Order No. 161457 which established 640 acres drilling and spacing units for the production of gas and gas condensate from the Mississippi Lime common source of supply by deleting from the purview thereof all of Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma, and for an order establishing 80 acre drilling and spacing units for the production of oil and gas from the Mississippi Lime common source of supply underlying Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma.

2. That the Commission has jurisdiction over the subject matter herein; and that notice has been given, in all respects, as required by law and the rules of the Commission, and no protests have been entered to the granting of the application.

3. That the applicant is the owner and operator of oil and gas leases covering portions of Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma; that by Order No. 161457 effective as of October 23, 1979, this Commission established a 640 acre drilling and spacing unit for the production of gas and gas condensate from the Mississippi Lime common source of supply, among other common sources of supply, underlying said property; that subsequent to said order, the applicant drilled the No. 1 Wehrenberg well located in the NW/4 SW/4 NE/4 of Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma; that said well was completed as an oil well on June 15, 1980 and is presently producing approximately five barrels of oil from the Mississippi Lime formation which was perforated at a depth of 5,053 feet to 5,310 feet; that at the time the original order was entered, the spacing was done on the basis of a prospective common source of supply; that there has been a substantial change in knowledge of the condition existing in the area since the date of the original spacing which has resulted in a re-evaluation of geo-

logical opinions concerning the Mississippi Lime common source of supply; and that as a result thereof, all of Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma should be deleted from the purview of Order No. 161457 which created a 640 acre drilling and spacing unit for the production of gas and gas condensate from the Mississippi Lime common source of supply.

4. That it is further the testimony that Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma is underlain by the Mississippi Lime common source of supply which was encountered at the depth of 5,053 feet to 5,310 feet; that said common source of supply will be primarily productive of oil and that one well will adequately produce all economically recoverable oil and gas from the Mississippi Lime common scource of supply underlying the surface area of 80 acres; that the drilling and spacing units to be established for the Mississippi Lime common source of supply should be formed by dividing each of the above described governmental quarter sections into two units by a line running north and south through the center thereof with the permitted well to be located not less than 330 feet from the unit boundary of the NE 40 acre tract and the SW 40 acre tract. It was further the testimony that the effective date of this order should be March 17, 1981.

5. That it was further the testimony that the MACK OIL CO. No. 1 Wehrenberg well is necessary to effectively and efficiently drain the 80 acre drilling and spacing unit consisting of the W/2 NE/4 of Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma insofar as the Mississippi Lime common source of supply is concerned; and that said unit cannot be effectively and efficiently drained by any existing well within such proration unit; that there are no other existing wells producing from the Mississippi Lime common source of supply underlying the area being spaced and that the authorized wells for the remaining 80 acre drilling and spacing units are necessary to effectively and

efficiently drain said 80 acre units created for the Mississippi Lime common source of supply and that said units cannot be effectively and efficiently drained by any other existing wells within such proration units.

6. That in the interest of securing the greatest ultimate recovery of oil and gas from the pool, the prevention of waste and the protection of correlative rights, this application should be granted.

ORDER

IT IS, THEREFORE, ORDERED BY THE CORPORATION COMMISSION OF OKLAHOMA, as follows:

1. That Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma be and the same is hereby deleted from the purview of Order No. 161457 which established 640 acre drilling and spacing units for the production of gas and gas condensate from the Mississippi Lime common source of supply; and that said 640 acre drilling and spacing units for the Mississippi Lime common source of supply underlying said property is hereby cancelled as of the 17th day of March, 1981.

2. That 80 acre drilling and spacing units be and the same are hereby established for the production of oil and gas from the Mississippi Lime common source of supply underlying the following described property, to-wit:

> Section 23, Township 22 North, Range 3 West, Garfield County, Oklahoma;

That the drilling and spacing units established for the Mississippi Lime common source of supply should be formed by dividing each of the above described governmental quarter sections into two units by a line running north and south through the center thereof with the permitted well to be located not less than 330 feet from the unit boundary of the NE 40 acre tract and the SW 40 acre tract.

3. That a map be attached hereto, marked Exhibit "A" and made a part hereof, showing the outline of the

area spaced herein, the size and shape of the drilling units, and the location of the permitted well in each unit.

4. That all royalty interests within any spacing unit shall be communitized and each royalty owner within said unit shall participate in the royalty from the well drilled thereon in the relation that the acreage owned by him bears to the total acreage in the unit.

5. That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then their rights and equities shall be adjudicated by the Commission, as provided by Subsection e, Section 87.1, Title 52, 1980 O.S.A.

6. That the MACK OIL CO. No. 1 Wehrenberg well is necessary and was necessary when said well was initially drilled to effectively and efficiently drain said 80 acre drilling and spacing unit insofar as the Mississippi Lime common source of supply is concerned; and that said unit cannot be effectively and efficiently drained by any other existing well or wells within such proration unit; that the permitted wells authorized for the remaining 80 acre drilling and spacing units established herein are necessary to effectively and efficiently drain said 80 acre drilling and spacing units insofar as the Mississippi Lime common source of supply is concerned; and that said units cannot be effectively and efficiently drained by any other existing well or wells within such proration unit or units.

7. That the effective date of this order shall be March 17, 1981.

DONE AND PERFORMED this 1 day of April, 1981.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
HAMP BAKER
Chairman

/s/ Bill Dawson
BILL DAWSON
Vice Chairman

/s/ Norma Eagleton
NORMA EAGLETON
Commissioner

ATTEST:

/s/ Berdee S. Holt
BERDEE S. HOLT
Secretary

[Graph Omitted in Printing]

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

Cause CD No. 66971

Order No. 172430

APPLICANT: *SUNDANCE ENERGY CORPORATION*

IN THE MATTER OF ESTABLISHING PROPER DRILLING AND SPACING UNITS FOR THE: *MISSISSIPPI LIME* BY VACATING ORDER NO. 53379 AS LAST AMENDED BY ORDER NO. 161044 (SO. 3488—640-ACRE GAS) AS TO THE MISSISSIPPI LIME UNDERLYING SECTION 7 AND BY THEN ESTABLISHING 160-ACRE PREDOMINANTLY GAS UNITS FOR THE MISSISSIPPI LIME UNDERLYING SECTION 7; FOR THE *HUNTON* BY VACATING ORDER NO. 62310 AS LAST AMENDED BY ORDER NO. 156704 (SO. 4719—640-ACRE GAS) AS TO THE HUNTON UNDERLYING SECTION 7 AND BY THEN AMENDING ORDER NO. 60088 AS AMENDED BY ORDER NO. 155433 TO INCLUDE SECTION 7 AS 160-ACRE PREDOMINANTLY GAS UNITS FOR THE HUNTON UNDERLYING SECTION 7, ALL IN T23N, R8W, GARFIELD COUNTY, OKLAHOMA.

REPORT OF THE COMMISSION

This Cause came on for hearing before Charles Helm, Acting Trial Examiner for the Corporation Commission

of Oklahoma, on the 2nd day of April, 1980, at 9:00 a.m., Jim Thorpe Building, Oklahoma City, Oklahoma, for the purpose of hearing, taking testimony, and reporting findings and recommendations to the Commission.

Barth P. Walker, Attorney, appeared for the Applicant, Sundance Energy Corporation; and Harvey Cody, Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the Cause and filed a report with the Commission, which report has been considered and the Commission therefore finds as follows:

FINDINGS

1. That this is an Application of Sundance Energy Corporation for an Order establishing proper drilling and spacing units for the Mississippi Lime and vacating Order No. 53379 as last amended by Order No. 161044 (640-acre Gas) as to the Mississippi Lime underlying Section 7 and by then establishing 160-acre predominantly gas units for the Mississippi Lime underlying Section 7; for the Hunton by vacating Order No. 62310 as last amended by Order No. 156704 (640-acre gas) as to the Hunton underlying Section 7 and by then amending Order No. 60088 as amended by Order No. 155433 to include Section 7 as 160-acre predominantly gas units for the Hunton underlying Section 7, all in T23N, R8W, Garfield County, Oklahoma; That 80-acre drilling and spacing units have been established for the Hunton in Section 13, T23N, R9W, which is Southwest of Section 7 and Section 7 is the same Hunton common source of supply as Section 13; that a well has been drilled in the SW/4 NE/4 of Section 7, which had an initial calculated open flow of 17,700 MCFD but produced cumulatively after October, 1969, of only 521,000 MCF of gas and 2,614 barrels of oil, conclusively showing that said well did not effectively and efficiently drain all of said Section 7 in the Mississippi Lime; that the well in the SW/4 of Section 6 has produced 2,646 MMCF of gas and about 20,000 barrels of oil from both the Hunton

and the Mississippi; that the well in the SW/4 of Section 1 has produced 1,099 MMCF of gas and 18,216 barrels of oil; that the well in the SW/4 of Section 12 has produced 2,211 MMCF of gas and 18,768 barrels of oil from the Mississippi.

That the regional dip of the Mississippi is generally to the South with a slight nosing evident through the W/2 of Section 31, Township 24 North, Range 8 West; that structure has little to do with the quality of the Mississippi, the prime condition necessary for production being the fracture system therein; that 640-acre drilling and spacing units were established for the Mississippi on the predicate that one well will adequately and effectively drain 640 acres; that the production of wells in the area clearly demonstrated that such is not the case, and that one well is incapable of draining the full 640 acres, and such constitutes a change of knowledge of conditions justifying the drilling of additional wells; that correlative rights can best be protected with the requirement that additional wells be drilled by forming Section 7 into 80-acre drilling and spacing units; that it appears that the predominant hydrocarbons to be produced from said Section 7 in the Mississippi, will probably be oil and the permeability of the Mississippi and because of the fracture system, unless wells are drilled to a density of at least one well to 80-acres in said Section 7, substantial quantities of economically recoverable oil and gas will be left in the ground; that because of the characteristics of the production in the area, an Order should be issued reforming the drilling and spacing units in Section 7 into 80-acre predominantly oil units, and this Application should be granted on this basis.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and by the rules of the Commission; that Applicant is an owner of an interest in the area covered by the Application.

3. That each drilling and spacing unit established hereby should be the proration unit for the well authorized to be drilled thereon; that the actual or prospective common sources of supply, named below, are expected to be encountered at the depths shown and same should be classified with drilling and spacing units and well locations established as follows:

Common Source of Supply	Classification	Unit Size (acres)	Well Location
Mississippi Lime	Predominantly Oil	80	Not closer than 330' to the boundary of the NE/4 and SW/4 of each quarter section.
Hunton	Predominantly Oil	80	

4. That, from the evidence, it appears that the common sources of supply named in paragraph 3, above, will underlie the lands respectively as described in paragraph 1, above; that one well is authorized to be drilled on each drilling and spacing unit; that the one well authorized for each such drilling and spacing unit is necessary to effectively and efficiently drain the portion of the reservoir underlying the drilling and spacing unit upon which the one well is situated and no portion of the reservoir can be or will be effectively and efficiently drained by an existing well within the drilling and spacing unit; that the size of the drilling and spacing units set out in said paragraph 3 is that which is necessary, in order to effectively and efficiently drain the portion of the reservoir covered thereby, and which should be established for the common sources of supply named in said paragraph 3; that each common source of supply named below is a natural accumulation of natural gas, oil or both, as classified in "Order" below, which is confined by impermeable rock and characterized by a single natural pressure system.

5. That, to prevent, or assist in preventing, the various types of waste prohibited by statute, or any said wastes, or to protect or assist in protecting the correla-

tive rights of interested parties, it is required that the Commission establish drilling and spacing units and well locations as set out under "Order" below.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That each drilling and spacing unit established hereby shall be the proration unit for the one well authorized to be drilled and produced thereon; that drilling and spacing units be and the same are hereby established as follows:

Common Sources of Supply	Classification	Drilling and Spacing Unit Size
Mississippi Lime	Predominantly Oil	80 acres

by amending Order No. 53379 as last amended by Order No. 161044 (640-acre gas) as to the Mississippi Lime underlying Section 7 and by reforming said Section into 80-acre predominantly oil units for the Mississippi Lime underlying Section 7; for the

Hunton	Predominantly Oil	80 acres

by vacating Order No. 62310 as last amended by Order No. 156704 (640-acre gas) as to the Hunton underlying Section 7 and by then amending Order No. 60088 as amended by Order No. 155433 to include Section 7 as 80-acre predominantly oil units for the Hunton underlying Section 7, all in T23N, R8W, Garfield County, Oklahoma.

2. That drilling and spacing units shall be the E/2 and W/2 of each quarter governmental section.

3. That each well hereafter drilled to said common sources of supply on each drilling and spacing unit established hereby must be drilled not closer than 330 feet to the boundary of the NE/4 and SW/4 of each quarter section.

4. That all royalty interests within each drilling and spacing unit are pooled and unitized and each royalty

owner shall share in the one-eighth (1/8) of all production from any well thereon in the proportion that the acreage owned by each such royalty owner bears to the entire acreage in the drilling and spacing unit.

5. That when there are two (2) or more separately owned tracts or undivided interests separately owned within any drilling and spacing unit established hereby, the owners thereof may validly pool their interests and develop the drilling and spacing unit as a unit; that where, however, such owners have not agreed to so pool their interests and to develop the drilling and spacing unit as a unit, their rights and equities shall be pooled and adjudicated as provided in subsection e, Section 87.1, Title 52, O.S.

6. That no more than one (1) well shall hereafter be produced from the common sources of supply named above on any drilling and spacing unit established hereby and the permitted well on any drilling and spacing unit established hereby shall be drilled only at the location thereon as prescribed above, unless the Commission, prior to the drilling of said well, shall have authorized a well location exception therefor in accordance with Section 87.1, Title 52, O.S.

7. That attached, and a part hereof as Exhibit "A", is a plat of the drilling and spacing units established by this Order and the permitted well therefor.

8. That this Order shall be effective as of the 2nd day of April, 1980.

DONE AND PERFORMED this 14 day of July, 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
Chairman

/s/ Bill Dawson
Vice Chairman

/s/ Norma Eagleton
Commissioner

ATTEST:

/s/ Berdee S. Holt
Secretary

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

Cause CD No. 73540

Order No. 181773

IN THE MATTER OF THE APPLICATION OF THE STATE OF OKLAHOMA EX REL COMMISSIONERS OF THE LAND OFFICE FOR AN ORDER TO MODIFY ORDER NO. 127152 SO THAT 80 ACRE DRILLING AND SPACING UNITS ARE ESTABLISHED FOR THE PRODUCTION OF OIL FROM THE CHESTER COMMON SOURCE OF SUPPLY AND THE MISSISSIPPI LIME COMMON SOURCE OF SUPPLY UNDERLYING SECTION 22, TOWNSHIP 24 NORTH, RANGE 17 WIM, WOODWARD COUNTY, OKLAHOMA.

REPORT OF THE COMMISSIONERS

Cause CD 73540 came on for hearing before Charles Nease, Trial Examiner for the Corporation Commission, on the 19th day of December, 1980, in the Commission's Courtroom, Jime Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission, for the purpose of taking testimony and reporting to the Commission.

At the time of the hearing, Mr. Paul DeGraffenreid, Attorney, appeared for the applicant, the State of Oklahoma ex rel Commissioners of the Land Office and Mr. Forest George, a royalty owner, appeared on his own behalf, and Ms. Alice Mitchell, Conservation Attorney, appeared for the Commission.

The Trial Examiner proceeded to hear this cause, and file his report recommending the application be granted, which report and recommendation are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is an application of the State of Oklahoma ex rel Commissioners of the Land Office for an order modifying Corporation Order No. 127152, which established 640 acre drilling and spacing units for the production of gas and gas condensates from the Chester Common Source of Supply and the Mississippi Lime Source of Supply underlying Section 22, Township 24 North, Range 17 West, I.M., Woodward County, Oklahoma, to establish 80 acre drilling and spacing units for the production of oil from the Chester and Mississippi Lime formations underlying Section 22, Township 24 North, Range 17 West I.M., Woodward County, Oklahoma.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and no protests have been entered to the granting of the application.

3. That the applicants are owners of oil and gas interests in the area described in paragraph 1 above.

4. That subsequent to the issuance of Order No. 127152, a well was drilled in the W/2 of the NE/4 of Section 22, Township 24 North, Range 17 West I.M., Woodward County, Oklahoma and said well is dually completed so that it is producing oil from both the Chester Formations and the Mississippi lime formations underlying said Section 22. The Chester formation was encountered at a depth of 6,532 feet to 6,665 feet. The Mississippi lime formation (Meramec) was encountered at the depth of 6,779 feet to 6,888. The well is dually completed and is productive of oil from both formations. There have been no gas sales from this well over the past twleve month period.

5. That a change of knowledge of conditions has occured as a result of the drilling of a well in Section 22, Township 24 North, Range 17 West I.M., Woodward County, Oklahoma and therefore Corporation Commission Order No. 127152 should be modified to the extent that the Chester common source of supply and the Mississippi common source of supply are now known to be combination oil and gas formations underlying the area which was spaced by Order No. 127152 and the Commission finds that Section 22, Township 24 North, Range 17 West I.M., Woodward County, Oklahoma, are primarily productive of oil from those formations and that 80 acre drilling and spacing units should be established for the production of oil from the Chester and Mississippi lime formations underlying said Section 22.

6. That in the interest of securing the greatest ultimate recovery of oil and associated hydrocarbons from the pool, the prevention of waste and the protection of correlative rights, this application should be granted, in accordance with these findings.

ORDER

IT IS HEREBY ORDERED by the Corporation Commission of the State of Oklahoma, as follows:

1. That Corporation Commission Order No. 127152, which established 640 acre drilling and spacing units for the Chester common source of supply and the Mississippi lime common source of supply underlying Section 22, Township 24 North, Range 17 West I.M., Woodward County, Oklahoma, is by this Order modified and that drilling and spacing units of approximately 80 acres in size are hereby established for the production of oil and associated hydrocarbons from the Chester common source of supply and the Mississippi lime common source of supply underlying said Section 22, Township 24 North, Range 17 West I.M., Woodward County, Oklahoma.

2. That said unit shall be formed by dividing each governmental quarter section covered by this application by a line running North and South through the center thereof creating a unit of the E/2 and W/2 of each quarter section, with the permitted wells to be located in the Southwest 40 acres and the Northeast 40 acres of each governmental quarter section, no closer than 330 feet to the outside boundary of such 40 acre tract, except that State of Oklahoma Well No. 1-22, which is located approximately 1320 feet North of the South line and 1220 feet East of the West line, shall be the permitted well for the West Half of the Northeast quarter of said Section.

3. That a map attached hereto, marked Exhibit "A", and made a part hereof, shows the outline of the area spaced herein, and size and shape of the drilling unit and the location of the permitted well in each unit.

4. That all royalty interests within any spacing unit shall be communitized and each royalty owner within the unit shall participate in the royalty from the well drilled thereon in the relation that the acreage owned by him bears to the total acreage in the unit.

5. That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then their rights and equities shall be adjudicated by the Commission as provided for by Title 52 O.S. 1971, § 81.1(d).

DONE AND PERFORMED THIS 31 day of Dec., 1980.

CORPORATION COMMISSION OF OKLAHOMA

/s/ Hamp Baker
HAMP BAKER
Chairman

/s/ Bill Dawson
BILL DAWSON
Vice Chairman

NORMA EAGLETON
Commissioner

ATTEST:

/s/ Lisa Burkeen
Acting Secretary

[Graph Omitted in Printing]